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NATIONAL ARCHIVES MICROFILM PUBLICATIONS

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RECORDS OF THE UNITED STATES

NUERNBERG WAR CRIMES TRIALS

UNITED STATES OF AMERICA V. KARL BRANDT ET AL. (CASE I)

NOVEMBER 21, 1946-AUGUST 20, 1947

Roll 11

Transcript Volumes (English Version)

Volumes 28-30

June 30-Aug. 20, 1947



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INTRODUCTION

On the 46 rolls of this microfilm publication are reproduced the records of Case I (*United States of America v. Karl Brandt et al.*, or the "Medical" Case), 1 of the 12 trials of war criminals conducted by the U.S. Government from 1946 to 1949 at Nuernberg subsequent to the International Military Tribunal held in the same city. These records consist of German- and English-language versions of official transcripts of court proceedings, prosecution and defense briefs, and final pleas of the defendants as well as prosecution and defense exhibits and document books in one language or the other. Also included in this publication are a minute book, the official court file, order and judgment books, clemency petitions, and finding aids to the documents.

The transcripts of this trial, assembled in 2 sets of 30 bound volumes (1 set in German and 1 in English), are the recorded daily trial proceedings. The prosecution and defense briefs and answers are also in both languages but unbound, as are the final pleas of the defendants delivered by counsel or defendants and submitted by the attorneys to the court. The unbound prosecution exhibits, numbered 1-570, are essentially those documents from various Nuernberg record series offered in evidence by the prosecution in this case. The defense exhibits, also unbound, are predominantly affidavits by various persons. They are arranged by name of defendant and thereunder numerically. Both prosecution document books and defense document books consist of full or partial translations of exhibits into the English language. Loosely bound in folders, they provide an indication of the order in which the exhibits were presented before the tribunal.

The minute book, in one bound volume, is a summary of the transcripts. The official court file, in four bound volumes, includes the progress docket, the indictment, amended indictment, and the service thereof; appointments and applications of defense counsel and defense witnesses and prosecution comments thereto; defendants applications for documents; motions; uniform rules of procedures; and appendixes. The order and judgment books, in two bound volumes, represent the signed orders, judgments, and opinions of the tribunal as well as sentences and commitment papers. Clemency petitions of the defendants, in five bound volumes, were directed to the military governor, the Judge Advocate General, the U.S. district court, the Secretary of Defense, and the Supreme Court of the United States. The finding aids summarize transcripts, exhibits, and the official court file.

Case I was heard by U.S. Military Tribunal I from November 21, 1946, to August 20, 1947. The records of this case, as the

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records of the other Nuernberg and Far East (IMTFE) war crimes trials, are part of the National Archives Collection of World War II War Crimes Records, Record Group 238.

The Brandt case was 1 of 12 separate proceedings held before several U.S. Military Tribunals at Nuernberg in the U.S. Zone of Occupation in Germany against officials or citizens of the Third Reich, as follows:

<u>Case No.</u>	<u>United States v.</u>	<u>Popular Name</u>	<u>No. of Defendants</u>
1	<i>Karl Brandt et al.</i>	Medical Case	23
2	<i>Erhard Milch</i>	Milch Case (Luftwaffe)	1
3	<i>Josef Altstoetter et al.</i>	Justice Case	16
4	<i>Oswald Pohl et al.</i>	Pohl Case (SS)	18
5	<i>Friedrich Flick et al.</i>	Flick Case (Industrialist)	6
6	<i>Carl Krauch et al.</i>	I. G. Farben Case (Industrialist)	24
7	<i>Wilhelm List et al.</i>	Hostage Case	12
8	<i>Ulrich Greifelt et al.</i>	RuSHA Case (SS)	14
9	<i>Otto Ohlendorf et al.</i>	Einsatzgruppen Case (SS)	24
10	<i>Alfried Krupp et al.</i>	Krupp Case (Industrialist)	12
11	<i>Ernst von Weissacker et al.</i>	Ministries Case	21
12	<i>Wilhelm von Leeb et al.</i>	High Command Case	14

Authority for the proceedings of the International Military Tribunal against the major Nazi war criminals derived from the Declaration on German Atrocities (Moscow Declaration) released November 1, 1943, Executive Order 9547 of May 2, 1945, the London Agreement of August 8, 1945, the Berlin Protocol of October 6, 1945, and the Charter of the International Military Tribunal.

Authority for the 12 subsequent cases stemmed mainly from Control Council Law 10 of December 20, 1945, and was reinforced by Executive Order 9679 of January 16, 1946; U.S. Military Government Ordinances Nos. 7 and 11 of October 18, 1946, and February 17, 1947, respectively; and U.S. Forces, European Theater General Order 301 of October 24, 1946. The procedures applied by U.S. Military Tribunals in the subsequent proceedings were patterned after those of the International Military Tribunal and further developed in the 12 cases, which required over 1,200 days of court sessions and generated more than 330,000 transcript pages.

The crimes charged in the Brandt case consisted largely of medical experiments performed on defenseless concentration camp inmates against their will; "euthanasia" carried out on the mentally defective, the physically sick, the aged, and ethnic and racial groups; and the murder of concentration camp inmates for the express purpose of collecting skulls and skeletons for the Anatomical Institute of the Reich University of Strassburg. The following medical experiments were conducted:

1. High altitude: to investigate effects of low pressure on persons.
2. Freezing: to test human resistance to extremely low temperatures.
3. Malaria: to develop controls over the recurring nature of the disease.
4. Mustard gas: part of a general research program in gas warfare.
5. Sulfanilamide: to test the efficacy of the drug in bone muscle and nerve regeneration and bone transplantation.
6. Seawater: to test methods of rendering seawater potable.
7. Epidemic jaundice: to develop an antitoxin against the disease.
8. Sterilization: to test techniques for preventing further propagation of the mentally and physically defective.
9. Typhus: to investigate the value of various vaccines.
10. Poison: to test the efficacy of certain poisons.
11. Incendiary bomb: to find better treatment for phosphorus burns.

The prosecution alleged and the judgment confirmed that these experiments were not isolated acts of individual doctors and scientists on their own responsibility but that they were the result of high-level policy and planning. They were carried out with particular brutality, often disregarding all established medical practice. Consequently, large numbers of the victims died in the course of or as a result of the experiments.

The euthanasia program was the direct result of a directive by Hitler of September 1, 1939. It resulted in the secret killing not only of aged, insane, incurably ill, and deformed German citizens in sanatoriums in Germany but also in the clandestine murder of foreign workers. The killing in gas chambers and by injections in the sanatoriums served as a proving ground for these forerunners of much larger installations in the mass extermination camps.

In addition to these experiments, over 100 concentration camp inmates were killed for the purpose of obtaining their skeletons. Their ghastly remains were found in Strassburg by Allied troops.

The transcripts of the Brandt case include the indictments of the following 23 persons all of whom were physicians except defendants Rudolf Brandt, Viktor Brack, and Wolfram Sievers:

Karl Brandt: Personal physician to Adolf Hitler, Gruppenfuehrer in the SS and Generalleutnant (Major General) in the Waffen SS, Reichskommissar fuer Sanitaets- und Gesundheitswesen (Reich Commissioner for Health and Sanitation), and member of the Reichsforschungsrat (Reich Research Council).

Kurt Blome: Deputy [of the] Reichsgesundheitsfuehrer (Reich Health Leader) and Plenipotentiary for Cancer Research in the Reich Research Council.

Rudolf Brandt: Standartenfuehrer (Colonel) in the Allgemeine SS, Persoenlicher Referent von Himmler (Personal Administrative Officer to Reichsfuehrer SS Himmler), and Ministerial Counselor and Chief of the Ministerial Office in the Reich Ministry of the Interior.

Joachim Mrugowsky: Oberfuehrer (Senior Colonel) in the Waffen SS, Oberster Hygieniker, Reichsarzt SS und Polizei (Chief Hygienist of the Reich Physician SS and Police), and Chef des Hygienischen Institutes der Waffen SS (Chief of the Hygienic Institute of the Waffen SS).

Helmut Poppendick: Oberfuehrer in the SS and Chef des Persoenlichen Stabes des Reichsarztes SS und Polizei (Chief of the Personal Staff of the Reich Physician SS and Police).

Wolfram Sievers: Standartenfuehrer in the SS, Reich Manager of the "Ahnenerbe" Society and Director of its Institut fuer Wehrwissenschaftliche Zweckforschung (Institute for Military Scientific Research), and Deputy Chairman of the Managing Board of Directors of the Reich Research Council.

Karl Genzken: Gruppenfuehrer in the SS and Generalleutnant in the Waffen SS and Chef des Sanitaetsamts der Waffen SS (Chief of the Medical Department of the Waffen SS).

Karl Gebhardt: Gruppenfuehrer in the SS and Generalleutnant in the Waffen SS, personal physician to Reichsfuehrer SS Himmler, Oberster Kliniker, Reichsarzt SS und Polizei (Chief Surgeon of the Staff of the Reich Physician SS and Police), and President of the German Red Cross.

Viktor Brack: Oberfuehrer in the SS and Sturmbannfuehrer (Major) in the Waffen SS and Oberdienstleiter, Kanzlei des Fuehrers der NSDAP (Chief Administrative Officer in the Chancellery of the Fuehrer to the NSDAP).

Waldemar Hoven: Hauptsturmfuehrer (Captain) in the Waffen SS and Chief Physician of the Buchenwald Concentration Camp.

Herta Oberheuser: Physician at the Ravensbrueck Concentration Camp and assistant physician to the defendant Gebhardt at the hospital at Hohenlychen.

Fritz Fischer: Sturmbannfuehrer in the Waffen SS and assistant physician to the defendant Gebhardt at the hospital at Hohenlychen.

Siegfried Handloser: Generaloberstabsarzt (Lieutenant General, Medical Service), Heeressanitaetsinspekteur (Medical Inspector of the Army), and Chef des Wehrmachtsanitaetswesens (Chief of the Medical Services of the Armed Forces).

Paul Rostock: Chief Surgeon of the Surgical Clinic in Berlin, Surgical Adviser to the Army, and Amtschef der Dienststelle Medizinische Wissenschaft und Forschung (Chief of the Office for Medical Science and Research) under the defendant Karl Brandt, Reich Commissioner for Health and Sanitation.

Oskar Schroeder: Generaloberstabsarzt; Chef des Stabes, Inspekteur des Luftwaffe-Sanitaetswesens (Chief of Staff of the Inspectorate of the Medical Service of the Luftwaffe); and Chef des Sanitaetswesens der Luftwaffe (Chief of the Medical Service of the Luftwaffe).

Hermann Becker-Freyseng: Stabsarzt in the Luftwaffe (Captain, Medical Service of the Air Force) and Chief of the Department for Aviation Medicine of the Medical Service of the Luftwaffe.

Georg August Weltz: Oberfeldarzt in the Luftwaffe (Lieutenant Colonel, Medical Service of the Air Force) and Chief of the Institut fuer Luftfahrtmedizin (Institute for Aviation Medicine) in Munich.

Wilhelm Beiglboeck: Consulting physician to the Luftwaffe.

Gerhard Rose: Generalarzt of the Luftwaffe (Brigadier General, Medical Service of the Air Force); Vice President, Chief of the Department for Tropical Medicine, and Professor of the Robert Koch Institute; and Hygienic Adviser for Tropical Medicine to the Chief of the Medical Service of the Luftwaffe.

Siegfried Ruff: Director of the Department for Aviation Medicine at the Deutsche Versuchsanstalt fuer Luftfahrt (German Experimental Institute for Aviation).

Hans Wolfgang Romberg: Physician on the staff of the Department for Aviation Medicine at the German Experimental Institute for Aviation.

Konrad Schaefer: Physician on the staff of the Institute for Aviation Medicine in Berlin.

Adolf Pokorny: Physician, specialist in skin and venereal diseases.

The indictment consisted of four counts. Count one charged participation in a common design or conspiracy to commit war crimes or crimes against humanity. The ruling of the tribunal disregarded this count, hence no defendant was found guilty of the crime charged in count one. Count two was concerned with war crimes and count three, with crimes against humanity. Fifteen defendants were found guilty, and eight were acquitted on these two counts. Ten defendants were charged under count four with membership in a criminal organization and were found guilty.

The transcripts also contain the arraignment and plea of each defendant (all pleaded not guilty), opening and closing statements of defense and prosecution, and the judgment and sentences, which acquitted 7 of the 23 defendants (Blome, Pokorny, Romberg, Rostock, Ruff, Schaefer, and Weltz). Death sentences were imposed on defendants Brack, Karl Brandt, Rudolf Brandt, Hoven, Gebhardt, Mrugowsky, and Sievers, and life imprisonment on Fischer, Genzken, Handloser, Rose, and Schroeder; varying terms of years were given to defendants Becker-Freyseng, Beiglboeck, Oberheuser, and Poppendick.

The English-language transcript volumes are arranged numerically, 1-30; pagination is continuous, 1-11538. The German-language transcript volumes are numbered 1a-30a and paginated 1-11756. The letters at the top of each page indicate morning, afternoon, and evening sessions. The letter "C" designates commission hearings (to save court time and to avoid assembling hundreds of witnesses at Nuernberg, in most of the cases one or more commissions took testimony and received documentary evidence for consideration by the tribunals). Several hundred pages are added to the transcript volumes and given number plus letter designations, such as page number 1044a. Page 1 in volume 1 (English) is preceded by pages numbered 001-039, while the last page of volume 28 (English) is followed by pages numbered 1-48.

Of the many documents assembled for possible prosecution use, 570 were chosen for presentation as evidence before the tribunal. These consisted largely of orders, directives, and reports on medical experiments or the euthanasia program; several interrogation reports; affidavits; and excerpts from the *Reichsgesetzblatt* (the official gazette of Reich laws) as well as correspondence. A number

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of the medical reports were accompanied by series of photographs and charts of various experiments.

The first item in the arrangement of the prosecution exhibits is usually a certificate listing the document number, a short description of the exhibit, and a statement on the location of the original document of the exhibit. The certificate is followed by the document, the actual prosecution exhibit (most of which are photostats), and a few mimeographed articles with an occasional carbon of the original. In rare cases the exhibits are followed by translations or additional certificates. A few exhibits are original documents, such as:

<u>Exhibit No.</u>	<u>Doc. No.</u>	<u>Exhibit No.</u>	<u>Doc. No.</u>
301	NO-1314	410	NO-158
307	NO-120	441	NO-1730
309	NO-131	443	NO-890
310	NO-132	451	NO-732
357	1696 PS	462	NO-1424
362	628 PS	507	NO-365
368	NO-817	546	NO-3347
403	616 PS		

No certificate is attached to several exhibits, including exhibits 433, 435-439, 462, 559, and 561. Following exhibit 570 is a tribunal exhibit containing the interrogation of three citizens of the Netherlands. Number 494 was not assigned, and exhibit 519 is followed by 519a and 519b.

Other than affidavits, the defense exhibits consist of newspaper clippings, reports, personnel records, *Reichsgesetzblatt* excerpts, and other items. There are 901 exhibits for the defendants. The defense exhibits are arranged by name of defendant and thereunder by exhibit number, each followed by a certificate wherever available.

The translations in the prosecution document books are preceded by indexes listing prosecution document numbers, biased descriptions, and page numbers of the translation. They are generally listed in the order in which the prosecution exhibits were introduced into evidence before the tribunal. Pages 81-84 of prosecution document book 1 are missing. Books 12, 16, and 19 are followed by addenda. The document books consist largely of mimeographed pages.

The defense document books are similarly arranged. Each book is preceded by an index giving document numbers, description, and page number for each exhibit. The corresponding exhibit numbers are generally not provided. There are several unindexed supplements to numbered document books. Prosecution and defense briefs are arranged alphabetically by names of defendants; final pleas and defense answers to prosecution briefs follow a similar

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scheme. Pagination is consecutive, yet there are many pages where an "a" or "b" is added to the numeral.

The English-language final pleas, closing briefs, and replies to prosecution briefs of several defendants are missing, as are a few German-language closing briefs and replies to prosecution briefs.

At the beginning of roll 1 are filmed key documents from which Tribunal I derived its jurisdiction: the Moscow Declaration, U.S. Executive Orders 9547 and 9679, the London Agreement, the Berlin Protocol, the Charter of the International Military Tribunal, Control Council Law 10, U.S. Military Government Ordinances 7 and 11, and U.S. Forces, European Theater General Order 301. Following these documents of authorization is a list of the names and functions of the members of Tribunal I and counsels.

These documents are followed by the transcript covers giving such information as name and number of case, volume numbers, language, page numbers, and inclusive dates. They are followed by summaries of the daily proceedings providing an additional finding aid for the transcripts. The exhibits are listed in an index, which notes type of exhibit, exhibit number and name, corresponding document number and document book and page, a short description of the exhibit, and the date when it was offered in court. The official court file is indexed in the court docket, which is followed by a list of witnesses.

Not filmed were records duplicated elsewhere in this microfilm publication, such as prosecution and defense document books in the German language that are largely duplications of prosecution and defense exhibits already microfilmed or opening statements of prosecution and defense, which can be found in the transcripts of the proceedings.

The records of the Brandt case are closely related to other microfilmed records in Record Group 238, specifically prosecution exhibits submitted to the International Military Tribunal, T988; NI (Nuernberg Industrialist) Series, T301; NOKW (Nuernberg Armed Forces High Command) Series, T1119; NG (Nuernberg Government) Series, T1139; and records of the Milch case, M888, the List case, M893, the Greifelt case, M894, and the Ohlendorf case, M895. In addition, the record of the International Military Tribunal at Nuernberg has been published in *Trial of the Major War Criminals Before the International Military Tribunal* (Nuernberg, 1947), 42 vols. Excerpts from the subsequent proceedings have been published as *Trials of War Criminals Before the Nuernberg Military Tribunal Under Control Council Law No. 10* (U.S. Government Printing Office: 1950-53), 15 vols. The Audiovisual Archives Division of the National Archives and Records Service holds motion picture records and photographs of all 13 trials and tape recordings of the International Military Tribunal proceedings.

John Mendelsohn wrote these introductory remarks and arranged the records for microfilming in collaboration with George Chalou.

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Roll 11

Target 1

Volume 28

June 30-July 9, 1947

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

OFFICIAL RECORD

UNITED STATES MILITARY TRIBUNALS NURNBERG

CASE No. 1 TRIBUNAL I

U.S. vs KARL BRANDT et al

VOLUME 28

TRANSCRIPTS

(English)

30 June - 9 July 1947 pp. 10382-10716(48)

Official Transcript of the American
Military Tribunal in the matter of
the United States of America against
Karl Brandt, et al, defendants,
sitting at Nurnberg, Germany, on
30 June 1947, 0930, Justice Seals,
presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

The Honorable, the Judges of Military Tribunal I, Military Tribunal I is now in session. God save the United States of America and this honorable Tribunal. There will be order in the Court.

THE PRESIDENT: Mr. Marshal, have you ascertained if the defendants are all present in the court?

THE MARSHAL: May it please your Honor, all the defendants are present in the court with the exception of defendant Oberhauser who is absent due to illness. Medical certificate will be presented.

THE PRESIDENT: The Secretary will note for the record the presence of all the defendants in court with the exception of defendant Oberhauser who is absent on account of illness.

Counsel may proceed.

MR. HARRY: May it please the Tribunal, before calling the two witnesses who will testify as to the activities at Natzweiler, the prosecution desired to know whether or not the defense counsel for Becker-Freytag and Schroeder have any interest in this interrogation.

THE PRESIDENT: Counsel for defendant —

THE INTERPRETOR: The switch, your Honor.

THE PRESIDENT: Will you kindly repeat it to them?

MR. HARRY: I would like to know whether or not counsel for defendants Becker-Freytag and Schroeder intend to attend the session this morning while I am examining the two witnesses in connection with the activities at Natzweiler or whether or not it is only the defense counsel for Hase who has interest in this matter. They were duly warned or notified on Saturday that these witnesses would be called this morning, your Honor.

DR. FLINTING (Counsel for defendant Brugowsky): Mr. President, I shall notify these two defense counsels immediately.

THE PRESIDENT: Thank you, Doctor.

MR. HARRY: In the meantime, perhaps one of the defense counsels has some documents they can put in.

DR. KLAUSS: Mr. President, with the permission of the high Tribunal, I should like to make use of this interval to submit the English translation of three documents to the Tribunal, documents which I submitted into evidence a few days ago.

THE PRESIDENT: Will counsel, state for the record the defendant for whom you are appearing.

DR. KLAUSS: Dr. Kress, counsel for the defendant Professor Hootock.

THE PRESIDENT: Counsel may proceed.

DR. KLAUSS: The English copies have been provided with the corresponding exhibit numbers, which have been admitted into evidence.

THE PRESIDENT: These English documents available to the Tribunal?

DR. KLAUSS: Thank you, Mr. President, that will be all.

THE PRESIDENT: The Tribunal has received only three copies of these documents. Is there another file available?

The Tribunal has sufficient of these documents.

DR. FROSTMAN (Counsel for defendant Brack): Mr. President, may I make a brief urgent application? During the afternoon session of 13 May, page 7531 of the Court record, I have stated that after long efforts I had succeeded to find the author of the opinion which was given in connection with Document NO-205 upon which Brack has worked. This witness is now residing in the Russian Zone in Germany. In the meantime, I have been able to correspond with that witness asking him to appear in Nurnberg in order to make an affidavit upon his arrival.

Saturday evening — that is, on the 28th of June — I received a

telegram according to which this witness, in order to travel to Nurnberg would have to possess a document which is requested by the Russian Military Government in Germany in order to be able to leave the Russian Zone.

Delay in correspondence with the witness can be explained owing to the well known circumstances which make it impossible for us to send letters to reach the Soviet Zone in time.

I am now submitting to the General Secretary an application which requests the Tribunal to invite this witness to appear here. His name is University Professor Friedrich Holz residing at Halle — to testify that he had given an expert opinion to Brack in the spring of 1941 and that this expert opinion had been converted by Brack's collaborators to Document NO-203. I ask the Tribunal to grant my request and to tell the General Secretary that this document be sent to the witness either directly or through me in order to enable him to leave the Russian Zone and appear in Nurnberg.

I should also like to ask you to permit me after Holz's arrival to submit the affidavit to the Tribunal if such a submission is still possible before the beginning of the final phase. Unfortunately, I was not able to deal with the matter earlier since only Saturday I received the telegram.

MR. HARDY: Your Honor, it seems to me that a matter requiring this much difficulty could well have been taken care of since 9 December 1946. This is now June 30, 1947. I don't see but that an affidavit would suffice. He has had ample opportunity to bring this witness here.

THE PRESIDENT: If I understand Dr. Froeschmann correctly, he desires simply to submit an affidavit to the Tribunal, not call this man as a witness.

MR. HARDY: That is not my understanding, your Honor. It is my understanding Dr. Froeschmann intends to bring this man in as a witness and get clearance papers from the Russian Zone.

DR. FROSCHMANN: Mr. President, I should like Professor Holz to come to Nurnberg in order to get the affidavit from him when he is here and then submit it to the Tribunal. Obviously, that is impossible to deal with by way of correspondence. Since December until April I have tried to get his address. I always receive my replies three or four weeks too late.

THE PRESIDENT: Dr. Froeschmann does not desire to call this doctor as a witness but simply to have him attend at Nurnberg in order to make an affidavit.

DR. FROSCHMANN: Yes, Mr. President.

THE PRESIDENT: Dr. Froeschmann, did you hand the Secretary the application which you have made to the Secretary General?

DR. FROSCHMANN: Yes, Mr. President.

THE PRESIDENT: Dr. Froeschmann, the Tribunal will consider this application at the morning recess.

DR. FROESCHMANN: Thank you, Mr. President.

DR. FLEMING: Mr. President, Dr. Tipp will be in the courtroom immediately.

MR. HARDY: Your Honor, perhaps we could call the witness at this time and have him sworn in and go through some of his biographical data.

THE PRESIDENT: Very well.

MR. HARDY: The witness the prosecution wishes to call at this time is a prosecution rebuttal witness, Constantyn Johan Broers.

THE PRESIDENT: The Marshal will summon the witness, Constantyn Broers.

CONSTANTYN JOHAN BROERS, a witness, took the stand and testified as follows:

JUDGE SEBRING: Hold up your right hand, please.

MR. HARDY: If your Honor please, this witness will testify in the English language.

JUDGE SEBRING: Do you solemnly swear that the testimony you are about to give in this issue will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I will speak the truth and only the truth, so help me God.

JUDGE SEBRING: You may be seated.

THE PRESIDENT: I would ask the witness to spell his name.

THE WITNESS: My name is (spelling) B-r-o-e-r-s.

DIRECT EXAMINATION

BY MR. HARDY:

Q Witness, what is your full name?

A My full name is Constantyn Johan Broers.

Q When were you born?

A I was born the 29th of September 1913.

Q Where were you born?

A I was born in Pekalongan in Java, in the Dutch East Indies.

Q You are a Dutch citizen?

A I am a Dutch citizen.

Q Would you kindly outline briefly for this Court your educational background?

A My educational background is school in Holland, and afterwards high school and then university; first year in Batavia in the medical high school and afterwards University of Utrecht where I studied biology and I finished my studies.

Q When did you finish your studies at the University of Utrecht?

A When I came back in 1945 from concentration camp Dachau.

Q Prior to the war had you finished a substantial amount of your study period at the University of Utrecht?

A Before the war you mean?

Q Before the war, yes.

A Yes, I only finished my studies when I came back.

Q I see. What are you doing at the present time?

A At the present time I am an assistant of the University of Utrecht.

Q In what capacity?

A The capacity of an anatomical assistant on the medical and anatomical laboratory.

Q Witness, during the course of this interrogation inasmuch as we are both speaking in the English language, if you will kindly hesitate for a moment before you answer my question it will be helpful to the German interpreter and the court reporters.

A Yes, sir.

THE PRESIDENT: Just a moment, counsel. Dr. Tipp, does the Tribunal understand that at this session you are acting as counsel for defendants Becker-Freysang and Schroeder?

DR. TIPP: Yes, Mr. President.

THE PRESIDENT: The questions propounded to the witness before your arrival were simply as to his age and his educational qualifications and the fact that he is a Dutch citizen.

DR. TIPP: Thank you, Mr. President.

Q (By Mr. Hardy) Now, Mr. Broers, would you kindly tell the Court when you were first arrested by the Gestapo and for what reason?

A I was first arrested by the Gestapo on the 21st of July 1942 for underground activity and spy work.

Q For whom were you performing this underground activity and spy work?

A This underground activity I was performing for the so-called O.D., Orde Dienst. That was a Dutch underground organization. And the spy work I was performing for the I.D., the Inlichtingen Dienst. That was an organization formed for the English intelligence.

Q Witness, were you ever arrested or in the custody of the police for any crime prior to this arrest by the Gestapo in July, 1942?

A No, sir.

Q Now, after your arrest in July 1942, would you kindly tell the Tribunal briefly what happened to you?

JUDGE SEBRING: Mr. Hardy, I think the Tribunal would like to know whether or not this man was tried, and if so, by what sort of court.

MR. HARDY: That's what this question comprises, Your Honor.

A When I was arrested on the 21st of July, I was brought to the prison of Schereningen in Holland and there I was interrogated about my spy work and that lasted about eleven days. Then I was, without a trial, condemned to death and they told me I shall be shot down the next morning, but the next morning they brought me before one of the high ranking officers of the S.D. and he said to me that it was an error and I should forget it. Then afterwards I was interrogated for the O.D. case and after five months transported to the prison of Haren,

also in Holland, and in Haren I was interrogated for the case of the I.D., spy work case, and a short time afterwards in Haren we got a trial for the O.D. case. After five months in Haren I was transported to Utrecht and in Utrecht I had the trial for the spy work case. In these two trials I was detached. The Germans called that -- I don't remember the name -- "Abtrennung", I was Abtrennung. and then after five months in Utrecht they transported me to Amersfoort, and in Amersfoort I only was about three weeks and then became transported to Natzweiler.

Q Well, now, witness, after you had been tried twice for spying and for other underground activities, was sentence passed in your case?

A No, there was no sentence. The only two possibilities were sentence to death or Abtrennung. You could be sentenced to death or you could be detached from the process. You would be Abtrennung.

Q You were acquitted?

A Acquitted, yes.

Q And were you then acquitted after these two trials?

A Yes, sir.

Q Well, then, for what reasons were you sent to the concentration camp Natzweiler?

A I was there with about 150 other people and these people were all of these two trials, and we were sent to Germany as "Nacht und Nebel Haeftlinge" and Natzweiler was a camp established, I believe, especially for "Nacht und Nebel Haeftlinge."

Q When did you arrive at the concentration camp Natzweiler?

A I arrived at the end of October, 1943.

Q And how long did you remain in the Natzweiler concentration camp?

A Until the 4th of September 1944.

Q And then where did you go?

A And then we were transported to the concentration camp Dachau.

Q And you stayed there until the liberation?

A Yes, sir.

Q Will you kindly tell the Tribunal what your duties were when you first arrived at the concentration camp Matzweiler?

A At first, the first time for about the first three weeks about, I had my work in heavy command, called "strassenbau".

INTERPRETER RAMLER: Streetbuilding.

A (Cont'd) And then I became ill and I came to the so-called "Schonung". Schonung was a barrack where we could do light work until we would be good enough to again do the hard work, and then I made a portrait of one of the people there and so they saw that I was a draftsman and I got a job as the official draftsman of the Commander, "Schriftenmaler der Kommandantur".

Q Well then, at any time did you work in the camp hospital?

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A Yes, that came afterwards. That was the end of April or the beginning of May, 1944, that I was called into the hospital by the chief physician, SS physician of the camp, Dr. Platzer, and he asked me, "You are a biologist", and he said, "Can you do some bacteriological work?" I answered him, "I am a comparative anatomist, but when you give me literature and I have some time to work in, I can do the work." So he said, "From now on you are an assistant of the hospital." And from other people, prisoners of the camp, I heard that I was now an assistant of Dr. Hagen and that Dr. Hagen would do experimental work about typhus and there should be built a laboratory for me, but it was at that time that the Americans already landed and came nearer and nearer and so I think Professor Hagen didn't like to make some experiments in a concentration camp with human beings, and so I never saw in this quality as an assistant of Professor Hagen, I never saw him. But while I was an anatomist, Dr. Bogarts - Georges Bogarts —

Q Just a moment, witness, before you go into that subject. In summation then in April or May of the year 1944 you became an assistant in the camp hospital?

A Yes sir.

Q And it was your understanding that you were to work as an assistant to Dr. Haagen?

A Yes sir.

Q But, you never did in fact work as assistant to Dr. Haagen?

A No sir.

Q Did Dr. Haagen ever appear at the camp?

A Yes sir.

Q But you never talked to him?

A No sir.

Q You don't know whether he was performing any work in the camp after May 1944?

A Yes sir, there was many gossips about that in the camp.

Q But, from your own knowledge you don't know that he was working with typhus?

A No sir, not exactly.

Q What do you know from hearsay?

A From hearsay that he was experimenting with typhus and used for that purpose the prisoners of the camp and he used the gypsies for that, they said.

Q Where did you hear that?

A I heard that in the hospital from the camp, the prisoner physician, and from the prisoner nurses. They are the people who told me that.

Q And that was after May 1944 that Haagen was supposedly conducting this work?

A Yes sir. I don't know that exactly for I should be his assistant but I never saw him in this quality so when he should have worked afterwards I think I should act as his assistant.

Q But you had never seen him before the time you were ordered to be his assistant?

A Yes sir, when he made his rounds through the camp I saw him some times.

Q I see. And the reason why you never became his assistant was because a special laboratory to be built was not in fact built?

A No.

Q And who told you that a laboratory was to be built?

A That was told to me. I mean, also by one of the prisoners who were working in the hospital.

Q I see. Well, now this job of yours fell through as assistant to Dr. Raagon what did you do then?

A So I had nothing to do and then I met George Bogartz who was a prisoner, too, and a Belgian surgeon and he had to make the autopsies for the hospital, the normal autopsies, who were ordered by the prisoner physicians. When somebody was suspected to have been died by typhus we should look after that and give a report, and he asked me, George Bogartz, if I would like to assist him by his work and so I became his assistant.

Q Did you ever perform autopsies on some gypsies?

A Yes sir. That was one morning. I was called by Bogartz and he said, "Now we have a job, I don't like it but we have to do it."

THE PRESIDENT: Witness, about what date was that?

A I don't know exactly the date but it can have been in May or June.

BY MR. HARDY: Of 1944?

A Of 1944.

Q Continue witness.

A He said, "They have poisoned with gas some gypsies and the corpses of the dead we'll have to make a section of." So we went to the crematory and there was a section room there where we found on the table a naked corpse of a gypsy which was a young man in a good

state, a good physical state. And we saw there that there were blue colored spots on his skin. We waited for a moment and then came in a German in civics, he was wearing knickerbockers, and he was accompanied by an assistant and this assistant had with him some apparatus and photograph apparatus and photo cameras. And now we started on the direction of this German, we started our autopsy.

Q Do you know who that German was?

A I asked afterwards and people told me it was Haegon but when I was afterwards — when afterwards I was — they showed me photographs I know exactly that it was Hirt.

Q That it was Professor Hirt?

A Professor Hirt, yes.

Q I see. Continue.

A We made the autopsy in a common way beginning with a longitudinal cut through the skin of the thorax and then prepared the thorax muscles and afterwards cut the ribs and put up the sternum with the ribs so that we could see the inner of the thorax. And then it was very good to see that the lungs were edematous. They were so very swollen that the triangle of the heart was covered totally by the edges of the two lungs. And we had to take out the intestines of the thorax after they were filmed on the spot. And we put them down on the section table and they were filmed again and they were also taking photographs.

Q Was it obvious from the autopsy just what the cause of death was in the case of these two corpses?

A I discussed it afterwards with Dr. Bogartz and we came to the conclusion that this man was poisoned with a gas affecting the respiratory intestines, the respiratory system. For when we made the section through the larynx we saw that the mucosa was swollen and very red. Afterwards we had to take little samples of the intestines and had to put them in little bottles with alcohol and it seems that it was for the purpose of making histological investigations afterwards.

I don't know if these histological investigations were done in the pathological section of the hospital of the camp or that Dr. Hirt took these samples with him outside the camp. And after the autopsy Dr. Hirt told me how to write down. He dictated me the protocol and I wrote it down it was later typed by the administration room of the hospital of the camp.

Q Now, at these first 2 autopsies who was present?

A Present was Professor Hirt, an assistant, and I believe there was another assistant one time, a second assistant, and there was George Bogerts and me and that were the people present who were there.

Q Did Professor Haagen appear at any time during the course of the autopsy?

A One time Dr. Haagen entered and he was accompanied by a blonde girl and by some of the officers of the camp. I believe he was making his round through the camp and he would like to see what happened here and to show it to this blonde girl.

Q Well, now when Professor Haagen came in were you performing an autopsy on an inmate?

A Yes, I was performing an autopsy on a gypsy.

Q Was that a different case than the two cases you told us about?

A Yes, it was one of these two cases.

Q I see. Did Dr. Haagen ask any questions or did he merely just stop in, look, and leave.

A He stopped in and he talked with Dr. Hirt and the blonde girl stayed in the opening of the door and then after some talking he went again. I don't know if they talked about these experiments or if they was talking about something else.

Q I see. Did you ever see Professor Haagen in uniform?

A Yes sir.

Q What type of uniform did he wear? That is the uniform of the SS, or the Wehrmacht, of the Luftwaffe, or the Navy, or what?

A I mean it was not the common uniform we saw there and I believe it was the blue uniform of the Luftwaffe.

Q Did Professor Hirt wear a uniform when he was at the camp?

A I don't think so. I mean the two or three times I saw him he was in knickerbockers.

Q I see. Now after the 2 autopsies on the gypsies did you ever perform any other autopsies on gypsies who had supposedly been poisoned by gas?

A No sir.

Q Did you ever perform autopsies on any other inmates who were used in experiments?

A No sir.

Q Then the extent of your knowledge in your capacity as an autopsy man in connection with experiments is the two cases of gypsies whom you autopsied and diagnosed as having died as the cause of gas poisoning?

A Yes sir.

Q I have no further questions, your Honor.

THE PRESIDENT: Witness, do I understand you to testify that your findings in the autopsy of the cause of death of these two ~~experiments~~ was the same, that is, the cause of death was the same in each case?

A. Yes, Sir, it was the same.

THE PRESIDENT: Counsel for defendants may cross-examine.

CROSS EXAMINATION

BY DR. TIPP (Counsel for the defendants Schroeder and Becker-Freysong:)

Q. Witness, if I understood you correctly, the camp physician, Dr. Platzer, requested you to become Professor Haagen's assistant, isn't that right?

A. No, that is not right. Dr. Platzer asked me to become an assistant in the hospital but he did not mention the name of Dr. Haagen.

Q. And who did ask you to carry out Haagen's bacteriological work and become his assistant?

A. It was only Dr. Platzer who ordered me to become assistant in the hospital and I afterwards heard from the prisoner-physicians in the camp that I should work for Dr. Haagen.

Q. If I understood you correctly, you never actually worked for Haagen, did you?

A. I never actually worked for Haagen.

Q. You also told us that, from your own knowledge, you could not tell us whether Haagen, after May 1944, carried out any experiments in the concentration camp, isn't that right?

A. Yes, I don't say exactly that I know about that but there was much gossip about that in camp.

Q. You have no knowledge of your own about that?

A. I have no knowledge of my own about that.

Q. Now as to the question of autopsies, witness. You were telling us before that you assisted in the case of 2 autopsies and that the cause of death in the cases of those 2 autopsies was found

to be gas poisoning or disintegration of the lung because of gas, is that right?

A. That is right.

Q. Let me establish, witness, that the man that participated in these autopsies was Professor Hirt, not Professor Haagen.

A. That is right.

Q. Furthermore, witness, you were seeing that Professor Haagen at one time attended one such autopsy, accompanied by a number of the camp and a blond lady, to whom he obviously intended to show the camp. In that connection, witness, let me ask you was an autopsy in the concentration camp of Hatzweiler something that attracted particular attention, or were corpses autopsied there on frequent occasions?

A. There were autopsies on frequent occasions but I thought that this dissection drew the attention and that therefore he came to show it perhaps to that girl or that he would see what we were doing on his round through the camp, where he was the main doctor of the camp who came every week and sometimes every week to look after the barracks with typhus patients.

Q. Very well, witness. You just told us that Haagen came to the camp once a week or more often than that and looked at the typhus barracks. Could you describe these typhus barracks to the Tribunal? Who was in there?

A. In these typhus barracks were laying the typhus patients. These typhus barracks were situated in the lowest part of the camp. The camp was built on the north side of a mountain in the Alsace and the barracks were laying on terraces and we had 2 rows of terraces; when you came in the main entrance we had 2 rows of barracks on your left hand and between those 2 rows of barracks we had a so-called Appell-place (roll-call square) also in terraces.

Q. Witness, if I understood you correctly, were inmate patients, typhus patients, put into these typhus barracks?

A. Yes, sir.

Q. They were not, as it might be derived from your testimony, subjects who had been used for experiments but they were people who had fallen ill of typhus?

A. No but there was a secret part of one of the blocks and nobody of us could enter it; it was forbidden; and there should be these experiments with gypsies. Most of it I heard by the gossip in the camp and by camp physicians who said they could state it. I never saw it myself.

Q. In that case you have no knowledge of what was going on in the experimental barracks?

A. No, I have no knowledge about that.

Q. Very well, witness, one further question. Do you know anything about the fact that in the spring or summer of 1944 a typhus epidemic had broken out in Natzweiler, or do you know nothing about it?

A. Yes, sir; there was a typhus epidemic beginning in the winter of 1943—in 43—44.

Q. Well, this epidemic started at a time when you were already in the camp, or was that before your time?

A. That was a new epidemic; when I was already in the camp it started.

Q. Could you tell the Tribunal, witness, perhaps you know it because of your connection with the camp physicians, how many patients there were in the camp at that time?

A. I do not know that. I cannot give any effective number of these patients.

Q. Do you know, witness, whether, during the course of this epidemic, there were any deaths?

A. Yes, sir, many death cases.

Q Let us revert once more to Mr. Haagen. You had not actually cooperated with Professor Haagen, had you?

A. No, sir.

Q. May I further establish that you know nothing about what Mr. Hagen had done in the spring and summer of 1944, from your own knowledge?

A. No, sir, I do not exactly know that from my own knowledge.

DR. TIPP: Thank you. I have no further questions to the witness.

THE PRESIDENT: Are there any other questions to this witness by any defense counsel?

BY DR. GASLIK (Counsel for defendant Hoven):

Q. Witness, do you know the City Councillor of Amsterdam, Stad-
trat Seegers?

A. No, I do not know him.

Q. Do you know a Dutchman by the name of Ploek?

A. Yes, but I do not know him personally. I do not know him personally.

MR. EARDY: Your Honor. I submit that this cross-examination on the part of defense counsel must be limited to what I brought up in direct examination.

THE PRESIDENT: Objection overruled. Counsel may examine the witness generally.

Q. What is Pieck's reputation in Holland?

A. I do not know that exactly. I cannot give any information about that.

Q. Do you know a Dutchman with the name of Baron Palland van Ender?

A. No, I do not know him.

Q. Do you know a Dutchman with the name of Jan Robert?

A. No, sir, I do not know him.

DR. GANLIK: Thank you, I have not further questions.

THE PRESIDENT: Any further examination of this witness by defense counsel?

BY JUDGE SEHRING:

Q. Witness, will you be good enough to answer a few questions for the Tribunal, please? As I understand your testimony, you were arrested by the Gestapo on the 21st day of July, 1942?

A. Yes, sir.

Q. And you were then given a trial for underground resistance activity and for spy intelligence activity and were acquitted? You were acquitted?

A. Yes, sir.

Q. By what type of Court, or group, were you tried, do you know?

A. Yes, sir. The first trial was by the Wehrmacht. That was an O.D. trial. That was a trial in Haaren. The second trial.....

Q. That was a trial where?

A. In Haaren, H-a-a-r-e-n. and the first trial was in Utrecht.

Q. Do you mean the first or second trial?

A. The second trial was in Utrecht, under the direction of the Luftwaffe.

Q. You then were in 2 trials by a military court or commission of some sort?

A. Yes, sir.

Q. The first one by the Wehrmacht?

A. Yes, sir.

Q. The second one by the Luftwaffe?

A. Yes, sir.

Q And then, as I understand you were acquitted upon both charges?

A Yes Sir.

Q How long after that was it before you were taken in custody and sent to Natzweiler?

A I was already in custody. I never came free. I was in custody from the 21st of July and I was brought to Natzweiler.

Q By whom?

A By the Green Police.

Q And what sort of an organization was that, do you know?

A The Green Police was an organization who had to maintain the order in the state, and was always helping when transports were going to guard us, but the transport leader was a man from the S.D. named Heinrich.

Q Were you told for what reason you were being retained in custody after your acquittal or for what reason you were being transported to Natzweiler?

A No, they never said it to us. It was common that people who were acquitted were brought to concentration camps, unless they came free.

Q Then you were never advised why you were in custody and were being transported to Natzweiler?

A No, sir, they suspected us, but they had no evidence against us.

Q Was anything told you after you were acquitted as to why you were being transported to Natzweiler?

A No, sir.

Q How many people were in your transport?

A Between 150 and 170.

Q And how were you conveyed to Natzweiler?

A With a train.

Q And that train, as I understood, was under the supervision of an S.D. officer?

A Yes, Paul Heinrich.

Q He was a German?

A He was a German.

Court I

Q And for what purposes were you sent to Hatzweiler, you said something about the Nacht und Nebel.

A The Nacht und Nebel.

Q You were in that group and under that Nacht und Nebel decree?

Now do you know that?

A To tell you one time in Arnoldsfoerde when waiting for our transport we saw Heinrich who visited us and talked to us and he had a paper in his hand and it read something like "Nacht und Nebel Erlasse."

Q Can you say to what extent from your own knowledge---

A Yes, from my own knowledge.

Q Can you say to what extent from your own knowledge other citizens from your country were put in similar transports for the concentration camps?

A Yes, sir. Afterwards there came other people who came to the camp. When we came in the camp we had to wear with red, -- what do you call that, -- we had to paint letters on our clothes.

Q Stencil letters of some sort?

A Yes, two W's on our back, and on our legs, on our breeches.

Q Was that true of all the people who came in under that decree?

A Yes, only for the people who came in under that decree.

Q Did you ever see a document or paper of any kind while you were in the camp which denoted the type of custody under which you were held, whether you were held as a political prisoner, a bible researcher, or a professional criminal or a race believer while you were held?

A Yes, when we came in we were registered in the Politische Abteilung, the political department and we saw how they filled out and they wrote down our names and then filled in the papers on the Nacht und Nebel, and afterwards when we came to Oranienburg at first I wrote, -- at first I could write a letter. It was forbidden for the Nacht und Nebel to write a letter or receive parcels or other things, and I wrote a letter twice, and the third time I was writing, then one of the German SS said to me that I could not write for I was still Nacht und Nebel.

Q And what did you understand that to mean?

A. Nacht und Nebel meant that you were put in prison, nobody knew where, you couldn't write letters to home and you couldn't receive parcels. The people at home didn't know where you were and we should go at night and Nacht und Nebel forever.

Q. And do you know whether or not the record which showed your name, where you came from and the reason for your custody was kept on file there?

A. Yes, sir, it was kept there, but I never saw it.

JUDGE SWERING: I see. Thank you. I have no further questions.
BY THE PRESIDENT:

Q. Witness, referring to those trials that you had, how many judges sat on those trials, one man or more than one?

A. There were about four or five judges with the president. The president was in the first trial of the Oberrecht, and the Richter of the Luftwaffe, his name was Klump, and in the second trial of the Luftwaffe it was Judge Paveschale.

Q. Were you represented by counsel?

A. Yes, sir. We had German counsels.

THE PRESIDENT: If a further questions.

MR. GUTLER: Soviet counsel for Moscow. Mr. President, I have a number of other questions in addition to the questions you just put.

Q. How long were you arrested?

A. From the 21st of July 1943 until the 25th of April 1945.

Q. Was it possible that Nacht und Nebel inmates were ever released and under what conditions would they be released?

A. I have never heard of a case that Nacht und Nebel was released, for most of them were sent to extermination camps, like my case.

Q. In what concentration camp were you?

A. In Holland in Amersfoort.

Q. I am speaking of Germany now.

A. In Germany in Harzweiler and afterwards in Seckau.

Q Your statements therefore only refer to the camps of Hatzweiler and Buchau?

A Yes, sir.

Q If I now put to you, witness, that a camp physician of another camp has succeeded in getting a large number of Nacht und Nebel inmates released would you agree with me that this was an exception?

A Yes, sir.

MR. CARRIE: Thank you. I have no further questions.

THE PRESIDENT: Are there any other questions of the witness?
Does the Prosecution desire to conduct redirect examination?

DIRECT EXAMINATION

BY MR. HARDY:

Q Witness, before your two trials you state that you were first arrested by the Gestapo in July of 1942 and then you were condemned to death without a trial?

A Yes sir.

Q Now, who condemned you to death without a trial in the first instance?

A I was interrogated about eleven days and on the evening of the 10th day there came in an officer of the SD, and he had a paper in his hand and he told me that I was condemned to death by a Standgericht. I don't know what court martial and then he said I would be shot down the next morning for spy work and political activities.

Q And then the next morning you were actually blindfolded?

A Yes, I was blindfolded and handcuffed and they took me with them. I thought I should have been shot, but they brought me to one or another room I don't know where and then they put me before a high ranking officer, I believe an Obergruppenfuhrer of the SD. This man asked me some questions and then he said to me, "You must see this whole case as an error and you must forget it and you must never speak about it."

Q Did he then release you and let you return home or keep you in jail?

A No, I was still kept in jail.

Q Then you later had the two trials?

A Yes sir.

Q In these particular transports in which Nacht und Nebel inmates were in; do you know what happened to all the Nacht und Nebel inmates when they arrived at the camp?

A Yes sir, most of us came in these heavy commands of "Strassenbau."

Q Did they exterminate any of the Nacht und Nebel prisoners?

A Yes, many of them were slain in their work while working with the carriages.

Q Was it known that the system was to exterminate Nacht und Nebel prisoners?

A Yes sir, it was a so-called extermination camp and the Nacht und Nebel Häftlinge had to be treated worse than the others.

Q I see. I have no further questions, your Honor.

THE PRESIDENT: The Secretary will file for the record the certificate from Captain Roy A. Martin, captain Medical Corps, Prison Physician, U. S. Army, stating that the defendant Herta Oberhauser is a patient in the 386th station hospital, U. S. Army. The diagnosis is acute gastroenteritis. The Secretary will file the certificate.

The Tribunal will now be in recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

MR. HARDY: The prosecution has no further questions to put to this witness, Broers.

THE PRESIDENT: The witness Broers is excused from the witness stand.

MR. HARDY: Before I proceed to the next witness, Your Honor, the question of the formal introduction of the prosecution's documents which have been marked for identification is one which the Tribunal discussed in the presence of the prosecution and the defense counsel at a meeting in chambers several weeks ago, and the Tribunal stated that they would look over the documents and then indicate which ones or take an assumption that they would all be subjected to objections and so forth. Now, in order to assist the Tribunal in that matter I have now prepared two sets of all the documents marked for identification, with an index. I will have, before the end of the day or by tomorrow morning, additional complete sets prepared and likewise maybe one or two for defense counsel. Everybody has copies of these particular documents but I will give these two sets to the Tribunal now in the period of the next half a day or this evening and they can look over these two sets and instruct us in a most expeditious way to introduce these for formal acceptance.

THE PRESIDENT: Has the prosecution any evidence to introduce this afternoon?

MR. HARDY: I have a witness to call now, Your Honor, and this afternoon I have no evidence to introduce, other than these documents which are marked for identification. And if it is possible for me to get all books together, that is, two or three more books together, by this afternoon, I will be able to take up the identification problem. After that time the prosecution may have one more witness to call and may have two or three other miscellaneous rebuttal documents; other than this, we have no further testimony to offer.

DR. GANDEK: Mr. President, I ask the prosecution first to submit a list of documents which are offered really for identification up to now and which are finally to be admitted in evidence, so that we will

have a period of twenty-four hours to examine these documents.

MR. HARTY: Of course, Your Honor, that is unnecessary but I will have the list. The twenty-four-hour period does not apply here. The defense has had some of them since January 26th.

THE PRESIDENT: These documents have already been offered to the Tribunal and marked for identification and copies delivered to defense counsel. I see no occasion for any further delay in the proceedings.

DR. GALLIE: Mr. President, it is not a question of the submission of the documents, but as long as the documents were only offered for identification we had no formal objections. Now, when these documents are to be admitted finally, we have to determine whether there are any formal objections. I am merely asking for a list of the numbers.

MR. HARTY: He will get that, Your Honor, in due course.

THE PRESIDENT: The list will be delivered to counsel for the defendants.

MR. HARDY: At this time, Your Honor, the prosecution wishes to call the witness Gerrid Hendrick Nales to the witness stand.

THE PRESIDENT: The Marshal will summon the witness Gerrid Nales to the witness stand.

MR. HARDY: The witness's first name is spelled G-e-r-r-i-d, rather than the way it is spelled on the notice. His middle name is spelled H-e-n-d-r-i-c-k, rather than the way it is spelled in the notice. The last name is the same - N-a-l-e-s.

This witness will testify in the German language, Your Honor.

(GERRID HENDRICK NALES, a witness, took the stand and testified as follows.)

JUDGE SEBING: Please hold up your right hand and be sworn.

I swear by God, the Almighty and Omnipotent, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

Proceed.

DIRECT EXAMINATION

BY MR. HARDY:

Q. Witness, do you hear in the German language?

A. Yes.

Q. Witness, during the course of this interrogation, after I propound a question to you, you will kindly hesitate a moment before you answer to enable the interpreters to put the question into the German language and the answer back to me in the English.

Witness, what is your full name?

A. Nales, Gerrid Hendrick.

Q. When were you born?

A. On 1 October 1915.

Q. Where were you born?

A. In Rotterdam.

Q. You are a Dutch citizen?

A. Yes.

Q. Would you outline to the Tribunal your educational background?

A. Public school.

Q. Did you go any further than public school?

A. No.

Q. How many years of school did you have in total?

A. Eight years.

Q. What was your occupation prior to the time that you were arrested by the Gestapo?

A. I was a fashion designer and draftsman.

Q. Witness, when were you first arrested by the Gestapo?

A. On 30 August - only one day.

Q. What year?

A. 1940.

Q. Were you ever arrested for any crimes prior to the arrest by the Gestapo?

A. No, never.

Q. What was the purpose for which you were arrested in August 1940 by the Gestapo?

A. I was in a Gestapo raid on the resistance movement.

Q. Would you remember whether or not you were given a trial after your arrest by the Gestapo for underground activities?

A. Yes.

Q. You were given a trial?

A. No.

Q. Well, did they merely keep you in prison or did they release you after having arrested you in August 1940?

A. I was freed by the Dutch police. Later I was rearrested again on 13 November 1940 until 1945.

Q. And when you were arrested on 13 November - that is, rearrested - were you then given a trial?

A. Yes.

Q. And what was the result of that trial?

A. We were separated and we were sent to the concentration camp
Buchenwald.

Q. Well, at that trial did they pass sentence on you?

A. No.

Q. Did you have a trial before a court of judges?

A. It was a court martial. I was not convicted.

Q. How many men sat on that court martial? Did you appear before a
court martial board, a group of men?

A. I don't remember exactly.

Q. And then you were sent to the Buchenwald concentration camp?

A. Yes.

Q. When did you arrive in the Buchenwald concentration camp?

A. 18 April 1941.

Q. How long did you remain in the Buchenwald concentration camp?

A. Until March 1942.

Q. And then where did you go?

A. Then I was sent on a transport to Natzweiler, concentration camp
Natzweiler in Alsace.

Q. How long did you remain in Natzweiler - from March 1942 until
when?

A. From 14 March 1942 until 4 September 1944.

Q. And then what happened to you?

A. Then we were transferred to Dachau.

Q. How long did you remain in Dachau?

A. Until the liberation by the Americans on Sunday, 29 April 1945.

Q. After you were transferred from Buchenwald to the Natzweiler
concentration camp in March 1942, what work detail were you assigned to?

A. First I worked on barracks construction and then transport columns,
the stone quarry, the DEET, and I went through all the details in the camp.

Q. Well, ^{when} did you first become an assistant nurse.

A. November 1942, perhaps - assistant nurse.

Q. And what were your duties there in the hospital?

A. I was used as a nurse only when the Ahnenerbe research station was set up.

Q. What is this name "Ahnenerbe" that you mentioned?

A. Ahnenerbe was a experimental station that was set up in a special department of the hospital, the prisoners' hospital.

Q. When was this Ahnenerbe research institute, as you call it, set up in the prisoners' hospital in Natzweiler, on what day - in November 1942 - the same time that you were there?

A. November 1942, in the course of the month of November.

Q. And you were assigned to work at this experimental or research station, is that right?

A. Yes.

Q. Do you know anything about experiments being conducted on human beings in Natzweiler?

A. When the first experiments were carried out, a test, a burning test, on the arms and the body--

Q. Were those experiments with gas?

A. I think - I can't say because I am not a doctor. I can only tell you what I saw, the procedure.

Q. Will you tell the Tribunal just what was done to the inmates in this burning procedure?

A. When the experiments were started, there were 14 German prisoners. First these people were given the army food. They were fed a little with the army food and then the experiments started. The professors came from Strassbourg and on these "15" people on their lower arm they rubbed something that was yellow material, and then the people were told they had to go to bed and keep their sleeves up. Most of the people lost consciousness and parts of their body were burned. After 24 hours they were covered with wounds. It had eaten up to their upper arm and then the parts of their body that were touched by their arms.

DR. TIPP (Counsel for defendants Schroeder and Becker-Freyseng):

Mr. President, the witness is testifying in German but he is uncomprehen-

sible. He is apparently a Dutchman and does not speak German well enough to testify in German so that it can be understood. Since the testimony is apparently rather poor, it might be advisable to have the witness testify in his mother tongue, that is, in Dutch, and to have an interpreter.

MR. HARDY: What does the interpreter think of that? Are you able to interpret this man's German into English? I am talking to Miss von Schon.

THE INTERPRETER: The German is rather difficult, Mr. Hardy.

MR. HARDY: Is it understandable enough so that the testimony here is clear; so it can be translated into English?

THE INTERPRETER: I think that so far I have understood the witness.

THE WITNESS: I speak German as I have learned it.

MR. HARDY: Your Honor, my interrogators have talked to this witness all day yesterday and had no difficulty whatsoever in understanding him. I think Miss von Schon has done a creditable job in translating this morning and the evidence she has given coincides with the interrogations given by the witness yesterday, and we are not in a position to put in a Dutch translator.

JUDGE SEBBING: I would ask whether or not the translator in the box who is listening can understand well enough to translate whatever the witness is saying into German for the benefit of those counsel who are apparently having difficulty with their version of their mother tongue.

MR. HARDY: Is that question addressed to Mr. Lemm?

JUDGE SEHRING: It is addressed to whom it may concern.

MR. HARDY: May I put two or three questions to the witness, your Honor?

Q. (By Mr. Hardy): Witness, when you were in the Hatzweiler concentration camp what language did you talk?

A. German.

Q. What language did you talk when you were in the Dachau concentration camp?

A. Only German.

MR. HARDY: That's all, your Honor.

THE PRESIDENT: It appears that the translators are satisfied that they are getting the gist and translating what the witness has said. I think we may proceed.

Q. (By Mr. Hardy): Witness, you were describing the details of the experiments which you referred to as burning experiments. Will you continue your description of those experiments?

A. I have already said when the material was put on the lower arm the people were put to bed.

DR. TIPP: Mr. President, the witness has just used the word "procede" and none of us knows what that word means. Perhaps the interpreter understood it. I did not.

MR. HARDY: The word means lower arm, your Honor.

THE PRESIDENT: Well, I would ask the interpreter the meaning of that word.

INTERPRETER VON SCHON: I assumed that the witness was using the French word "procede", your Honor, which I translated as "material".

THE PRESIDENT: Counsel states that no interpreter from the Dutch language is available?

MR. HARDY: No, your Honor and the prosecution feels that there is no necessity for it. This man was compelled to speak German from

November 1942 until April 1945, and the Germans certainly understood him at that time.

THE PRESIDENT: No one knows whether they did or not and it may be that when one is engaging in conversation the questions can be asked back and forth until the meaning is ascertained.

MR. HARDY: I think this objection is being pushed a little too far. The objection is over the use of one word "material" or "lower arm", whichever one they are referring to. I don't know whether they have an objection to any of the other words that he has used.

THE PRESIDENT: Well, I wonder if the German reporters are able to transcribe what he is saying in German.

THE SECRETARY GENERAL: They write what they hear regardless of what it is.

MR. HARDY: Well, do they understand what they are writing?

THE SECRETARY GENERAL: No.

MR. HARDY: I haven't any solution, your Honor. What languages do you speak, witness? Do you also speak the French language?

THE WITNESS: No.

MR. HARDY: You speak only the Dutch language?

THE WITNESS: Dutch and German.

MR. HARDY: Dutch and German. Have you ever had any complaints about your ability to speak German before this time?

THE WITNESS: No never.

DR. TIPP: Mr. President, if I may comment on this, it is not to be denied that the witness does speak to some extent German. But what he certainly cannot explain in his broken German are those technical expressions, and we know that in those points on which the witness is to be examined—lost experiments, perhaps typhus experiments individual technical expressions are important and I am sure that the witness will not be able to give them in German. That is the objection that I have.

THE PRESIDENT: Well, if the witness does not know the technical expressions he cannot even attempt to give them, but the witness ought to be able to say what he has seen, and then the interpretation of what he has seen may be for a technical witness to interpret. The matter may proceed until at least it becomes further complicated than it appears now.

MR. HARDY: Would the witness choose to testify in the Dutch language?

THE WITNESS: I have no difficulty in German.

THE PRESIDENT: Well, the matter may proceed. I will instruct the interpreters that if they find difficulties in the translation and don't understand it, that they will immediately advise the Tribunal to that effect. I will also instruct the witness to speak very slowly and distinctly.

THE WITNESS: Yes.

Q. (By Mr. Hardy): Now, witness, would you continue your explanation of what you saw in the experimental station concerning these burning experiments?

A. As I have already said, the material that was put on their arms had the effect that their arms were burned and other parts of their body too. Then the people were unconscious for a few days and they were blind because there was an effect on the eyes. 5 one died, three. And others in the course of the month became more or less invalids and were sent back to the camp.

Q. Now, witness, do you know whether or not any of these experimental subjects died? Did you say three?

A. Yes.

Q. Do you know what kind of gas was used in these burning experiments?

A. No.

Q. You don't know that?

A. No.

Q. Now, was the result of these burnings terrible and atrocious looking to you; that is, the wounds created?

A. Yes, terrible.

Q. Do you know the names of the doctors who performed these gas burn experiments?

A. Professor Hirt and Bickenbach.

Q. Professor Hirt, who was Professor Hirt?

A. Professor Hirt, as far as we know, was from the University of Strasbourg.

Q. And who was Professor Bickenbach?

A. That was a colleague of his or an associate of his or something like that.

Q. How many times did you see Professor Hirt performing such gas burn experiments?

A. How often?

Q. Yes.

A. The experiment with the fifteen people, that was only once.

Q. Did Bickenbach assist him in that entire experimental series of the fifteen people?

A. He was there several times. I am not certain, but I think he carried on the examination and Professor Hirt had an autopsy on a person who had died in the room of the Ahnenerbe station.

Q. How long did these gas burn experiments last, for a period of several months or just a week or so?

A. The treatment lasted a noon on one day and then the people were sick for some time, for some months, from April and May, '43 approximately.

Q. And these three experimental subjects who died in the gas experiments, did you see them?

A. Yes, I saw them.

Q. Did you know the name of an inmate named Holl?

A. He was the nurse in this ward.

Q. What type of a man was he? Was he a very decent character or was he a rogue or what description could you give us about him?

A. He was a political prisoner. He had been in the concentration camp for many years. He was very decent to these fellow prisoners, and he did a great deal for the people in the experimental station. Otherwise more than three would have died.

MR. HARDY: If you recall, your Honors, the testimony of the witness Holl corroborates the testimony of this witness.

Q. Now, witness, in a later period of time did you have any knowledge or connection with work by Professor Hagen?

A. Yes.

Q. Can you tell us who Professor Hagen is or was?

A. Professor Hagen was a Luftwaffe Officer or a professor who worked in Strasbourg at the University. He wore the Luftwaffe uniform with the staff of Aesculapius on it, and in October, 1943 approximately, he came to Natzweiler for the first time.

Q: And what happened after Professor Hagen arrived in October 1943?

A: That I'll you say?

Q: What happened after Professor Hagen arrived in October 1943?

A: Shortly before that a transport of gypsies had come from the Birkenau camp near Auschwitz for experimental purposes for typhus experiments. And then Hagen came to Metzweiler and examined these people and had them X-rayed. And his finding was that he could not use these people for his experimental purposes and I heard that in the Annonara station he told the camp doctor of Metzweiler that he couldn't do anything with these people and he sent a protest to Berlin and said he had to have stronger people immediately, also gypsies. Shortly after that these first one hundred of the group, a large part of them had already died on the way and then while they were in Metzweiler for a few weeks they were sent away again on the Himmelfahrt (Ascension to Heaven) transport, that means the transport where people didn't have any destination and after a few weeks, it was in November 1943, the new people arrived. I can't give an exact number but it was about 90. These people were examined again and they were found to be alright. Then Professor Hagen divided these people into two rooms, 2 groups, he made out of them. One group went to room one and the other to room two and then he divided these again into groups one and two. Then the people of the first group were given a vaccination against typhus. The second group was given nothing. I think 10 to 14 days later all the people were artificially infected with typhus. I can't tell you how, I am not a doctor, but I was there when they did it. There was a woman there, too. In the course of this matter about 30 gypsies died. And, the rest in the course of the month, until March or April, the people had recovered to a

certain extent and were sent to Camp Nockur-Eltz. As I said, about 30 died. I have evidence of that.

Q: What evidence do you have of that, witness, that 30 of these subjects used in the typhus experiments died?

A: I said about 30. I have the death records of Hatzweiler. When I was put on transport to Dachau I stole the death records. I copied them so that I could use them later and under great difficulty I took them with me to Dachau.

Q: And do these records show that 30 of these experimental subjects died in the typhus experiments?

A: Yes.

Q: Now, witness, reviewing your statement concerning the typhus experiments you state that in October 1943 a transport of 100 gypsies arrived from Auschwitz concentration camp to be used in the typhus experiments. Is that correct?

A: Yes.

Q: And then these 100 gypsies were not used as experimental subjects because their state of health did not permit it and Haagen himself then complained about it and asked for further gypsies to be sent to him at Hatzweiler, is that correct?

A: Yes.

Q: And then the further gypsies arrived?

A: Yes.

Q: And then the further gypsies arrived?

A: Yes.

Q: There were about 90 you said, in that second group?

A: Yes.

Q: And this experimental group were physically fit so that they could endure the experiments to the satisfaction of Haagen, is that correct?

A: Yes, they had recently been released from the Wehrmacht and

the SS and sent to the concentration camp.

Q: Now, these prisoners they were, that is the 90 prisoners the gypsies were they well fed before the commencement of the experiments?

A: Well, fed.

Q: For a period of how long?

A: I mean when they came in they were well fed. They hadn't been in a concentration camp such a long time as we had or as other gypsies had. They had just recently been arrested.

Q: Yes, I see. Well then after their arrival they were divided into two groups?

A: Yes.

Q: In the experimental station Jannowitz?

A: Yes.

Q: And then Professor Hagen vaccinated one group and did not vaccinate the other, is that correct?

A: Not the other one, that's right.

Q: Were you in a position to see the vaccinations take place?

A: Yes.

Q: Then after a period of a number of days Professor Hagen returned and injected these two groups with artificial infected typhus?

A: Yes.

Q: Did you see him inject with artificial infected typhus?

A: I was there. The people were all stripped naked and then I had to line the people up and bring them into the room where it was done and I saw how they were inoculated.

Q: Inoculated or injected?

A: Injected. I cannot tell you what it was injected into them.

Q: Well, how do you know that this was an artificial typhus that they were injected with? How do you know but that it was some

sort of another vaccination?

A: That was no secret. A number of guinea pigs and white mice had been used, had already been injected before we had prisoner doctors and they were able to judge these cases.

Q: And the prisoner doctors stated that these subjects were artificially infected with live typhus?

A: Yes.

Q: Now in any event after this infection did the experimental subjects get decidedly sick?

A: Yes.

Q: Did you see them yourself?

A: Yes, I nursed them.

Q: And you say that some of them died, 30 died as a matter of fact?

A: Yes.

Q: How often did Hagen visit this experimental station?

A: In the first days of the experiment he came 2 or even 3 times a day. Later he came every day, sometimes he came on Sunday too.

Q: And you say he wore the uniform of a Luftwaffe officer?

A: Yes, I am certain of that.

Q: Can you remember what rank he held?

A: Stabsarzt.

Q: Did he ever wear civilian clothes?

A: Once or twice. I saw him in a blue suit and once in a grey suit.

Q: Now, can you tell us whether or not these experiments of Hagen, that is the typical typhus experiments conducted in the experimental station of the Anatomie had any association with the typhus epidemic that was raging in Natzweiler?

A: No, certainly not.

Q: How of these people that survived the typhus experiments what

happened to them?

A: They were put on a transport to Meckler-Eltz.

Q: Well, were any of them used in other experiments?

A: Yes.

Q: Will you tell us about that please?

A: About May 1944 Hagen came back and asked for the two rooms of the Ahnenerbe again. They were already full of patients, the phlegmons, and foot and leg wounds, etc., customary diseases in the camp, and he asked for these two rooms again and experiments began - gassing experiments. He used some of these gypsies who had already been used once with the typhus experiments and some groups who were already in the camp. Then he had four groups of gypsies. He took one group after the other down to the gas room and brought them back up again. I know very well Hagen went down with these people and he came back up with the, too. What happened down there at Stutthof, where the gas chamber was, I don't know but I only know when they came back they were in a very bad way. They couldn't breathe, etc. Professor Hagen with several of the groups started with the oxygen apparatus and then gave instructions first every $\frac{1}{2}$ hour, then every hour, then every 2 hours, that the blood pressure was taken and breathing, etc. Some of these people died, too.

Q: How do you know they died, witness?

A: Because I nursed them myself and because I had to take them down when they died. I know with certainty that they died of lung edema.

Q: Will now you say that Hagen ordered them to the poison experiments, to be used in the poison experiments, these 8 people?

A: I don't understand you.

Q: Did Hagen himself select these gypsies to be used in the poison experiments?

A: Yes.

Q: Now, these poison experiments are not to be confused with the experiments by Professor Hirt and Bickenbach, is that correct?

A: No, that was something entirely different.

Q: Now witness, in these experiments did the experimental subjects volunteer? That is in the first experiments of Hirt and Bickenbach, the typhus experiments of Hagen, and these poison gas experiments of Hagen?

A: Yes.

Q The experimental subjected volunteered?

A In the first experiment there were German volunteers, professional criminals and normals - they were volunteers. A number of people volunteered for them but they had been promised their freedom if they volunteered. In the second experiment, the Hagen typhus experiments, they definitely were not volunteers, definitely not. I talked to these people for hours and days. In the third experiment I saw how the people cried when they were picked out after the second experiment and they cried but they couldn't do anything but do it - they couldn't get out of it because they were gypsies; definitely they were not volunteers.

Q Well, then, in the first experiment you state that the 15 subjects used were former Wehrmacht soldiers who were sent to concentration camps for some breach of duty, is that right?

A Yes, some of them; most of them were criminals and normals.

Q And they absolutely volunteered - you are sure of that?

A Yes. And they were offered a pardon if they went through the experiments?

A Yes.

Q Did they ever get it?

A No.

Q Now the experiment with gas burns, were the experimental subjects exclusively Germans or were there some Poles or Czechs or Austrians or Russians or Frenchmen used?

A No. There were only Germans in the first experiment.

Q Now in the typhus experiments you state that they were decidedly not volunteers?

A Decidedly not.

Q And were they also of just the German nationality or were the gypsies and the people used in the typhus experiments of various nationalities?

A Various nationalities.

Q Any of the Polish?

A Poles, Czechs, mostly Poles and Czechs, some Hungarians and then

were Gypsy or gypsies.

Q. Now these subjects used in the gas experiments, the poison gas experiments by Hergen, you state that they were not volunteers also?

A. No, they were not.

Q. They were not?

A. No.

Q. Were they also of various nationalities?

A. Yes.

Q. Now, witness, you have stated here that you had an opportunity to copy the death books of the Haterwiler Camp. Do you have the copies that you made with you or are they in your possession?

A. Yes.

Q. Could you explain to the Tribunal....

THE PRESIDENT: I would like to ask the witness a question before you proceed any further. Witness, referring to the last experiment concerning which you testified, you said that the experimental subjects were of various nationalities. What nationalities were they?

A. Gypsies and Poles and 1 Hungarian.

THE PRESIDENT: Proceed, counsel.

Q. Now, would you explain to the Tribunal just what these books and copies are that you have made and would you try to point out to the Tribunal what deaths are listed in the books which coincide with your testimony that deaths occurred in these particular experiments? Would it be possible to do that from a study of your books?

A. Yes.

Q. Would you do that for us and tell us just what the books purport to be?

A. Yes. I have these books here. We did not have the names of the Gypsies. We had just the numbers and when they died we just put down "1 Gypsy, 3 Gypsies" etc., but not the names and not the numbers either. We were not given those. In the last experiment I do have the names and

the other people who died, died in Dachau because in the meantime there was the evacuation from Mauthausen. Here is the book.

Q. Would you kindly pass those books up to the Tribunal first, so that they can look at them?

(Book is passed up to the Tribunal.)

Q. Witness, is this book a copy? Is that the original book that was made by yourself or other inmates?

A. That is a copy of the original.

Q. When was that copy made?

A. Until the last day of the evacuation.

Q. Who made that copy?

A. A Norwegian prisoner, a Luxembourg prisoner, and myself.

Q. Now, will you point out to the Tribunal what entries in that book indicate the deaths that you have outlined here in your testimony?

A. Yes.

Q. While the Tribunal is still looking at the book I will ask you another question. Did you ever draft charts at the experimental station, inasmuch as you were a draftsman in civilian occupation?

A. You mean did I make drawings for Professor Haagen?

A. Yes.

A. I kept the list of statistics that showed the course of the case history of the last experiment; I mean from hour to hour.

Q. That is the poison gas experiment?

A. Yes.

Q. And did you work together in making that chart with Professor Haagen?

A. It was like this. Haagen wanted somebody who could draw well and my Cape, the hospital Cape, assigned me to do this because I was already working there. When I made this list Haagen sat next to me and gave me instructions on how I was to do it.

Q. Well, could you ascertain from this chart whether or not the experimental subjects had died?

A I don't know. I don't remember.

Q Well, was Hagen particularly interested in whether or not these subjects died? Just what was his interest in these experiments -- do you have any idea?

A The course of the disease and if people died they were taken down to the crematorium. I don't know how many, but an autopsy was performed there.

Q Well, now, you state that by the death books, 4 of these subjects used in the gas experiments, poison gas experiments by Hagen, died. Can you point out what you mean by that by use of the book?

A Yes.

Q Would you do that please? That page in the book would you find that, and explain the entry that you have there in the book, and just what it means, to the Tribunal.

A Yes. Hodassai, Andreas; Rabstock, Rasko, born 28 May 1901. There was an autopsy performed on him. I know that for certain.

Q Well, now, was he one of the subjects used in the experiment?

A Yes.

Q How do you know that?

A He was in my ward.

Q You know the man?

A Yes, I know all these people. I can remember many of them very well. And Rabstock, I had to wash him, I remember, because he was to be taken down to the autopsy room.

MR. HEDY: Do you have a question, your Honor?

BY THE PRESIDENT: Under what date is that annotation contained in the book?

A At the end of June 1944.

Q Are the pages of this book numbered?

A Yes.

BY MR. HEDY:

Q What page is that on -- that entry that you referred to?

A No, there was just a number and it was entered under the month of June - at the end of the month of June - but in the original book there were the dates of death, June 1, June 2, etc. - but not in this copy.

Q Well, now, is that copy numbered - is each page numbered? In other words, is it paginated 1, 2, 3, 4, 5, etc. - the pages?

A No. No.

Q Well, then, how could I find that entry in that book. What would be the method for me to identify what page that is on?

THE PRESIDENT: I would suggest that during the noon hour.....

A It says June, 1944.

Q And the book goes through in calendar order, is that correct? In other words the first page of the book starts with what date? What date is the first page?

A The first page begins 1942.

Q And it goes through to what date, to the end of the book?

A August 1944.

Q And, now, there are actually 2 book, aren't there?

A One book for European and one book for Polish and Russian prisoners. The Russian and Polish prisoners were kept in a separate book. That is this book.

Q Well, now, were any of the deaths in these experiments of people in the second book - the Russian and Polish prisoners?

A Only the Polish people and the Russians. Not the gypsies. Only Poles and Russians.

Q I see. Well, now.....

A Yes, those are all deaths.

Q Would you give those books to us so that we can offer them in evidence here before this Tribunal, or do you wish to retain them?

A I would like to have them back later.

Q Then could we have them reproduced and keep them on loan from you for a period of several weeks and return them to you at a later date?

A Yes.

MR. HARDY: If your Honor please, I would like to paginate the book, with permission of your Honors, with perhaps a red pencil, so that we can refer to them more thoroughly.

THE PRESIDENT: I was about to suggest that the books be paginated with a red or blue pencil and carefully numbered from 1 on, and the....

MR. HARDY: Other than having the witness point out the particular death in the book I have no other questions to put to him, your Honor.

THE PRESIDENT: This pagination can be done during the noon recess today and, of course, defense counsel will have an opportunity to examine the books. I think they might examine them during the noon recess also. Give the books in the custody of the secretary of this court and they could examine them in his custody.

MR. HARDY: All right, your Honor. Then in that case, your Honor, I have no further questions, other than the questions I wish to put to him concerning the book and I cannot very well put them without identifying the pages therein.

THE PRESIDENT: The Tribunal will now be in recess until 1:30 o'clock.
(A recess was taken until 1330 hours.)

AFTERNOON SESSION

(The hearing reconvened at 1330 hours, 30 June 1947.)

GERRIT H. MALE - Resumed

Direct Examination (Continued)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Counsel may proceed.

BY MR. HARDY:

Q Your Honors, I have five indexes of the documents, which have been marked for identification and will be offered formally in the English language by defense counsel by numbers. We have the document number, the exhibit and the transcript page in which they appear in the official record.

The pagination of the Death book is ready.

Now, Mr. Male, I should like you to take the Death Book, which you have made up and indicate to the Tribunal, going through the Death book page by page, the death which resulted as a result of the experiments, that is, the inmates used in the experiments and to explain each death therein as you know it from your own knowledge.

(The Book is handed to the witness).

THE PRESIDENT: There are two books; what book are you submitting to the witness?

BY MR. HARDY:

Q I am only going to submit one, Your Honor. The only one he has is the one that refers to this situation. The other one is a Polish and Russian death book which has no connection with the experiments at all.

Now on page 1, Mr. Male, are there any deaths on that page which refer to persons used in the experiments?

On page 2 are there any deaths there that refer to persons used in experiments?



Q On what page is the first page where a death appears?

A Page 16.

Q Page 16; now which person there died as a result of the experiments?

A On Page 16 the B.V. inmate 1219, Josef Rufer, born on 9 March 1896.

Q Now, which subject is he on that page, counting from the top, which subject is he on page 16?

A The eighth counting from above.

Q That is the eighth name counting from above, page 16, is the name of a man who died in the experiments; which experiments?

A That was the first experiment of the Ahnenerbe.

Q That is the gas burning experiments or the typhus experiment or the poisonous gas experiments; which one?

A It was the gas burning experiment.

Q Now do you know from your own knowledge whether that man died or do you know only from your knowledge of the book?

A I saw this corpse personally.

Q Now is this one of the men of the group that volunteered?

A Yes.

Q Well now, do you know what these first 15 men used in the gas burn experiments volunteered for?

A No, certainly not.

Q Well, did they volunteer for a dangerous experiment or for a harmless experiment?

A They volunteered for a harmless experiment.

Q Then in other words they did not expect to die as a result of the experiments?

A No.

Q Were they warned that the experiments were going to be very severe and might cause death?

A No.

Q Now go to the next death as a result of experiments in that book.

A This is on page 17.

Q Will you count from the top and tell us the number of the subject on the page, so that we will have a proper reference, Mr. Nale?

A It is the 12th name counting from above.

Q On page 17; now what is the name there?

A Professional Criminal No. 1656, Karl Kirn, born on 14 September, 1907.

Q And what experiment was he used in?

A He was used for the same experiment as in the case before, it was the gas burn experiment.

Q Do you personally know of that death; did you see that corpse also?

A Yes.

Q Now, will you go to the next death which occurred as a result of the experiment?

A Now we come to the third death case as a result of the gas burn experiments, it is the 13th name on page 17 from above, Professional Criminal, No. 1346, Friedrich Dries, born 6 April 1905.

Q Does the record show the date of death?

A No.

Q Can you tell me whether you saw that corpse or not?

A Yes.

Q Now, will you turn to the next death, which you have written down in that book, which occurred as a result of some of the experiments?

A Yes, on page 38 you find experiments with typhus. The 12th name counting from above, you find a group of 18 gypsies; none of the names are mentioned.

Q Well, how do you know that refers to the gypsies that died in the typhus experiments?

A Because only gypsies were entered into that book without names or numbers, all other inmates entered in this death book bear a name and number.

Q Weren't there any other gypsies in the camp other than the gypsies being used for typhus experiments?

A Yes.

Q You said yes, do you mean there were other gypsies or there were not other gypsies?

A In addition to these gypsies, there were other gypsies who were normally registered in the camp.

Q Could it be possible that these deaths referred to other gypsies, that is gypsies other than those used in the typhus experiments?

A That is out of the question.

Q Well, now you see on page 36.....

A Page 36.

Q Page 38 there are 18 blank spaces where the names should be.

A Yes, there are 18 gypsies who died as a result of the experiments.

Q Well, what does the entry say in the book on page 18 to indicate that these were 18 gypsies?

A Between the last deaths and the following deaths there are the words, "18 Gypsies."

Q I see and that is on what line on page 38; Line No. 12?

A The 12th line from above.

Q Did you personally ever see any of those gypsies?

A I saw all of them.

Q Did you see the corpses?

A Yes.

Q Now can you tell us from which room in the experimental station these corpses came from, as I recollect your testimony, you stated that Raagen divided his experimental subjects up into two groups,

one group was in room no. 1 and one group was in room No. 2; now do you know where those 18 gypsies were in; room 1 or room 2; do you understand the import of my question?

A Yes and I cannot tell you that exactly, most of them belonged to the group which was not protected.

Q And that group was in which room, the ones that were not protected I mean.

A Ahrensberbe Room 1.

Q And the group that were vaccinated were in Room 2?

A Yes, they were housed in the dressing room, which was Room 2.

Q Now, will you go to the next entry in the book, which indicates to you that these are records of deaths which occurred as a result of experiments?

A Then we go over to page 39, the second line down from above; here we have one gypsy, he is entered in the same way that the other 18 are.

Q I see -- and the next entry?

A On line No. 5 counting from above, there is another gypsy.

Q On page 39?

A Yes, page 39.

Q Then indicate the next entry.

A On line 7 you find another gypsy entered.

Q On page 39?

A Yes.

Q Now, the next entry?

A Page 39, line 11, you find three gypsies.

Q And the next entry?

A Now, we go over to page 40, second line from above -- one gypsy.

Q And the next entry?

A Fourth line from above, 2 gypsies.

Q And the next?

A Line 11 from above, one gypsy.

Q And the next entry?

A Now we go over to page 43, the 8th line from above, 1 gypsy.

Q Yes...

A I repeat line 8, page 43.

Q And the next?

A These are deaths caused as a result of typhus experiments.

Q Now, do you have any further deaths, which are recorded in that death book, which you have knowledge about?

A Yes.

Q Would you point those out, please?

Q As a result of gas poisoning experiments you find on page 74, 7th line from above, the gypsy 6587, name - Podassy Andreas, presumably a Hungarian, he was born on 12 February 1911.

Q And how do you know that that name referred to in that entry is one and the same as the man experimented on by Haagen in the poison gas experiments?

A Because after the name, there is the letter "V" inserted.

Q And what does "V" mean?

A I, myself, made that notation for the word "Versuch" for experiment.

Q Did you see that experimental subject dead?

A Yes.

Q Go to the next entry, please.

A Now, we stay on the same page, the 8th line from above, there you find the gypsy 6516, the name of Bubstock Cirko, born on 28 May 1901.

Q Now those two gypsies, on page 74 or is it -- what page is that?

A Yes.

Q Page 74, is that true, page 74?

A Yes.

Q Those two gypsies you saw being subjected to poison gas experiments; is that right?

A. No, I saw them already as they were led down.

Q. What do you mean by, you saw them as they were led down?

A. These men who were selected for this last experiment were led to the gas chamber in groups. That was in the concentration camp, Mauthausen.

Q. And then later you saw them dead?

A. Yes, I later saw these people dead.

Q. Will you go to the next entry?

A. Yes, I should like to explain one thing first, however.

Q. Go right ahead.

A. The gypsy, Rebstock, Cirko, I remember very well, I received the order to wash him to cleanse him.

Q. You mean after he was dead?

A. Yes, after he was dead. And then I had to take him down towards the crematory into the autopsy room. He was to be autopsied.

Q. Did you ever wash any of the other experimental subjects after they died?

A. Yes, certainly.

Q. How many, would you say?

A. As a rule, all of them were washed.

Q. Did you wash any of the experimental subjects in the typhus experiments after they died?

A. Certainly.

Q. Go to the next entry, please.

A. Now we go over to page 75, second line from above. Here you have the gypsy, 6545, Adalbert Eckstein; born on the 2nd of February, 1924. This is the second line from above on page 75.

Q. Did you see him dead also?

A. Yes.

Q. To the next entry, please.

A. Now we go to page 81, the second line from below; here is

the gypsy, 6564, the name Rheinhardt Mideti, Josef, born on the 27th of August, 1913.

Q. Did you see him dead?

A. Yes.

Q. Go to the next entry, please.

A. At the extreme bottom of page 81 you find the gypsy, 6521, probably a Czech. His name is Rositzka, Josef; born on the 18th of December, 1909.

Q. And you also saw him dead?

A. Yes.

Q. Do you have any other entries there recording deaths as a result of the experiments?

A. No.

Q. Is that a complete list of those you know died as a result of the experiments you told the Tribunal about this morning?

A. Yes, these are the last cases of which I was speaking.

Q. Witness, that book that you have in your hand, do you certify that that is a true extract of the death book at Natzweiler, taken by yourself and two other inmates?

A. Yes.

Q. What is your home address now?

A. Rotterdam.

Q. What street number, please; so that we can return this book to you in due time, I want your name in the record and your address, so that we can fulfil the promise of returning these things to you after we have had them reproduced.

A. Yes, Males, Gerrid, Hendrick; born—

Q. We don't need that. Just your street address, where we can mail this to you.

A. Slaghekstraat, 87--Rotterdam

Q. And the name of that is Slaghek, is that correct?

A. Slaghekstraat, 87-a.

Q. That is in Rotterdam?

A. Rotterdam.

MR. HARDY: Your Honor, at this time I would like to introduce this death book as certified by the witness, and give it a Prosecution exhibit number. This will not, of course, be introduced as an exhibit for identification, but as an exhibit formally, and the procedure in offering an exhibit with number and then having it reproduced, does the Tribunal wish that that duty be discharged by the Prosecution or the Secretary-General?

THE PRESIDENT: That duty should be performed by the Secretary-General, who will be custodian of the volume and will return it to the owner after the usefulness of the book has been served here.

MR. HARDY: Thank you. I have no further questions, Your Honor.

I will mark that book as Prosecution's Exhibit 560 and entitle the book rather than give it a document number: "Death Book, Natzweller," which is Exhibit 560.

THE PRESIDENT: The exhibit will be received in evidence with the understanding which I referred to a moment ago.

MR. HARDY: No further questions, your Honor.

THE PRESIDENT: I note the presence of Dr. Froeschmann, the attorney for the Defendant Brack.

The Tribunal, Doctor, has approved your application for the attendance of the witness in the Russian Zone, with the understanding, however, that the affidavit which you desire to take from this witness must be taken and presented to the Tribunal prior to the close of the evidence in the case.

DR. FROESCHMANN: Thank you, Mr. President.

THE PRESIDENT: Cross examination of this witness by defense counsel may proceed.

CROSS EXAMINATION

DR. WEISGERBER (Counsel for defendant Sievers):

Q. Witness, from March 1943 until 4 September 1944 you were in Natzweiler?

A. Yes.

Q. From when were you working as an assistant nurse at the so-called department Ahnenerbe?

A. Ever since November 1942.

Q. November 1942? When did the so-called burning experiments start?

A. That was in November 1942.

Q. Very well. The experimental subjects came from outside or had they been selected in Natzweiler?

A. They were selected in the camp itself.

Q. You have already testified that these experimental subjects had volunteered?

A. Yes.

Q. How do you know this fact?

A. They were selected at the block and they were told that this would be a simple matter only for which they would receive better nourishment. In view of the need inside the camp these people volunteered.

Q. Who told that to these people?

A. The man who selected them.

Q. That was the camp physician?

A. The SS camp physician of Natzweiler.

Q. The SS camp physician of Natzweiler?

A. Yes.

Q. Were you personally present during that event?

A. No.

Q. From whom did you learn what the camp physician of Natzweiler told them?

A. The persons told me that themselves.

Q. A witness has already testified, here, a witness who also came from Natzweiler, that Professor Hirt had held a lecture to these experimental subjects about the purpose of the experiments which he intended.

A. That was only later. That only happened after they had already been selected.

Q. But then Professor Hirt held a lecture?

A. Yes, but then they were already located at that department, that block.

Q. Well, these people had been requested to volunteer for special experiments in the camp at Natzweiler, the camp physician told them that this was to be an experiment, then the people were sent to the station, and here Dr. Hirt once more addressed them?

A. Yes, that is how it was--yes.

Q. You were speaking about the station Ahnenerbe. How did this station get this name "Ahnenerbe."

A. Well, I cannot tell you that. I only know that that was the name. It was no secret.

Q. Well, it needn't be a secret. At any rate, we have established that at the time you went to that station the name "Station Ahnenerbe" already existed?

A. Yes, we had received this information in order to see that the drugs which we received would not be confused with the drugs that the other inmates in the camp had to receive. These drugs, these solutions or ointments were not to be used for the other inmates.

Q. Well, you yourself nursed these experimental subjects?

A. Yes.

Q. You were saying that three of these experimental subjects died?

A. Yes.

Q. When did they die? Can you ascertain that from your notes?

A. Yes. You will find that in my book.

Q. The date can be ascertained?

A. The month can be ascertained.

Q. Very well.

A. I did not have sufficient time to make an entry every day.

Q. Have you already returned the book?

A. Yes, I have.

Q. I shall once more have the book handed to you in order to enable you to ascertain the month or the months during which these three people had died in connection with the burning experiments. Would you please select these three months?

A. December 1942.

Q. That refers to the three cases of the first experiment?

A. Yes, December 1942.

Q. In what manner was the cause of death ascertained?

A. That happened in the dressing room. Once they were dead we immediately reported that fact. Either the professor or the assistant came along and examined these people. That was not our matter and once these corpses were released we transferred them to the crematory.

Q. In that way you cannot say what exactly the cause of death was in connection with these three people.

A. They had high fever and then a severe relapse. They had horrible wounds full of puss. They suffered terribly before they died.

Q. But, witness, I was asking you whether you know exactly what the cause of death was in these cases.

A. That I could not ascertain. I can only tell you what I saw.

Q. Now, how big was this so-called department Ahnenerbe?

A. How do you mean—how many people?

Q. Well, I am asking you was it one barrack or was it only part of a barrack? How many rooms were in there?

A. We had a room No. 1 and a room No. 2. We had a pathological department and a room for treatments.

Q. Was this a barracks or a stone building?

A. No, it was part of a barracks, when you entered you found it on your left side, the left wing.

Q. Was it a normal wooden barracks?

A. Yes, a normal wooden barracks. That was repaired in the department Ahnenerbe.

Q. Can you give us approximately the size of that barracks, how long it was, how wide it was?

A. I think it was 96 meters.

Q. 96 meters long?

A. Yes, 96 meters long. I believe so. I cannot tell you that with certainty—about 7 meters wide.

Q. You think that this barracks was 96 meters long?

A. Yes, it was just an ordinary concentration camp barracks.

Q. Were there many such barracks in Natzweiler?

A. Certainly, at that time.

Q. I believe that you are in a position to estimate approximately what 96 meters means.

A. Yes.

Q. But you still remain at your opinion that it was 96 meters?

A. Yes, approximately 96 meters, 90 meters, something like that. I really didn't take too much interest in that.

Q. You were in Natweiler in the years of 1943 and 1944?

A. Yes.

Q. Was this barrack at that time still designated Ahnenerbe?

A. Yes.

Q. Was there any notice attached to this barrack?

A. No.

Q. Well, if I understand you correctly the barrack was designated as the Ahnenerbe barrack among the inmates?

A. That did not apply to all of the inmates, only those who knew.

Q. And how did these few inmates have that knowledge?

A. In every camp there are rumors and rumors pass from one to another.

Q. At any rate you have no exact material which could tell us in what connection this barrack was with the Institute of Ahnenerbe?

A. I didn't quite understand you, counsel.

Q. In Berlin there was an institute called Ahnenerbe; do you know that?

A. That may be. I don't know. I only know that they received their assignments from Berlin. I heard that once.

Q. And who received these assignments you are talking about?

A. Well, Strasbourg, Strasbourg perhaps, the professors of Strasbourg.

Q. But you know nothing authentic about it personally?

A. No.

Q. Witness, this morning you were telling us that the inmates who volunteered for these experiments were promised that they would be pardoned after the experiment. Furthermore, you stated that that was never carried out?

A. No.

Q. These inmates who were used for these burning experiments, did they remain in that barracks during the subsequent period?

A. No.

Q. Well, where were they sent?

A. None of them got away. They all were transferred, they all became invalids and as invalids they were sent back to the camp. For some time they were employed in the weaving industry. However, they couldn't work there. They were just sitting around, and so one after the other was sent away on invalid transports and this is how they left.

Q. Did you have an opportunity to observe these inmates during the subsequent period?

A. Yes.

Q. How many inmates were there in Natzweiler?

A. In Natzweiler I think there were twelve hundred inmates, twelve hundred inmates. That is in the mother camp of Natzweiler. The Natzweiler camp had some outside branches. I think in the whole camp there were about seven thousand inmates, during the last period.

Q. And do you mean to say that you always had an opportunity to observe these twelve inmates who were used for the burning experiments and ascertain how long they remained in the camp?

A. That is not at all difficult. It wasn't at all difficult to observe the people.

Q. Now, one more question. In the case of the experimental subjects used for the experiments of Dr. Haagen, were they also in the department of Ahnenerbe?

A. Yes, we had to vacate this department for that particular purpose because it was filled with other patients.

Q. And for whom was this department to be vacated?

A. For the research of Ahnenerbe.

Q. How do you know this latter fact, that this vacating was to be carried out for the institute of Ahnenerbe?

A. We had received the order that this place was to be vacated because people would come from Auschwitz. That is the official in-

formation we received.

Q. But that this evacuation was to be carried out on behalf of the institute of Ahnenerbe, how did you know that?

A. I already told you that we received an order that this place was to be vacated since it was to be used for the Ahnenerbe.

Q. Did you ever see a written ordinance to that effect?

A. No.

Q. Who told you that? Who told you that these barracks were needed by the Ahnenerbe?

A. The camp physician of Hatzweiler, the SS camp physician.

Q. Did he tell you that personally?

A. No, not me personally, but I was present. I received the order personally.

Q. To whom was the camp physician speaking?

A. He was speaking to the kapos of the hospital.

Q. Now, one more question in connection with the burning experiments. You were saying that Dr. Hirt on frequent occasions went to Hatzweiler to this station. Were you present on all these occasions?

A. Whenever the professor came to visit us we were mostly engaged in the changing of dressings. We had to bathe these two people once every two hours and on this occasion he sometimes came in to examine the people. He was accompanied by a man from the Luftwaffe who photographed these people every day. He sometimes photographed them twice a day.

Q. Since you are saying that you were at this station regularly, you probably also have had an opportunity to observe whether visitors from outside came to that station?

A. Certainly.

Q. Did you receive frequent visits?

A. Sometimes, not exactly frequent.

Q. During the time when the typhus experiments were carried on,

did you hear the name Sievers--S iever?

A. I can't remember.

Q. Did you hear this name Sievers mentioned in connection with the burning experiments?

A. No, I cannot remember.

DR. WEISGERRER: Mr. President, I have no further questions.

THE PRESIDENT: Any other cross examination of this witness by defense counsel?

MR. HARDY: Before further cross examination continues, your Honor, if the cross examination and redirect examination, if any of this witness, are completed and there is still time left this afternoon, Dr. Tipp will be prepared to present his supplemental documents for the case of Becker-Freysing, so I am telling that to the Tribunal so they may have their supplemental copies available.

THE PRESIDENT: Very well.

CROSS EXAMINATION

BY DR. FRITZ (Counsel for defendant Rose):

Q. Witness, did you know the nurse, male nurse, Holl?

A. Yes.

Q. Did you know your countryman, Broers?

A. Yes.

Q. Did you also know a certain Grandjean?

A. Grandjean, yes.

Q. Were they also at this typhus experimental station?

A. Yes, he worked there but not at the Ahnenerbe department.

Q. Did these three people also know something about the execution of the experiments as you described them today?

A. Certainly, they must have known about that but not in such detail, certainly not about typhus because at that time he was already in Baden-Baden. I mean Holl. But he knew about the burning

experiments.

Q. And how about the other two, Grandjean and your countrymen?

A. Yes, they certainly knew about these things but not to the same degree as I. They were not as often present as I was.

DR. FRITZ: I have no further questions, Mr. President.

CROSS EXAMINATION

BY DR. TIPP (Counsel for defendants Becker-Freyseng and Schroeder):

Q. Witness, if I understood you correctly, Professor Haagen, as you said, for the first time entered Natzweiler in October 1943; is that true?

A. Yes.

Q. You were furthermore saying that at first a transport of about a hundred gypsies arrived. You further said that Professor Haagen examined this transport and then sent these people away because they were not physically strong enough; is that true?

A. Yes.

Q. Now, witness, would you please tell us when Professor Haagen started with his vaccinations in Natzweiler?

A. That was approximately in November 1943.

Q. Is it possible, witness, that this was only in December of 1943?

A. One moment, please. It must have been at the end of November.

Q. Very well. On how many persons were these vaccinations performed, witness? I am talking about the vaccinations by Mr. Haagen.

A. Do you mean the beginning or the end or what?

Q. I want to put this question to you quite generally. When did Mr. Haagen start to work with these inmates?

A. I think that was in November, during the course of November 1943.

Q. And when were these experiments concluded?

A. About April, 1944, the typhus experiments?

Q. Yes, In other words from November 1943 until April of 1944.

How many inmates did Mr. Haagen use as experimental subjects?

A. Approximately ninety.

Q. You were saying this morning, if I understood you correctly, witness, that these subjects were divided into two groups?

A. Yes.

Q. How many persons did one such group comprise?

A. Half. They were divided in exactly two groups.

Q. Could you please tell the Tribunal, witness, what exactly Mr. Haagen did with these groups? Tell us what he did with the first group and then what he did with the second.

A. The first group received a protective vaccination.

Q. Let me ask you, witness, if I understood you correctly, you are not a physician?

A. No, I am not.

Q. How then can you tell us exactly that Mr. Haagen vaccinated these people?

A. Well, I am a trained nurse. I have learned the nursing profession in Hatzweiler.

Q. And within the framework of this education you gained enough knowledge in order to tell us what Mr. Haagen did with this first group was actually a protective vaccination?

A. Well, we had our physicians there too among the inmates, and they knew it just as well as I did.

Q. Well, who were these inmate physicians, witness?

A. For instance, there was a Dutch Physician, Dr. Kredit, who unfortunately died of typhus.

Q. Was there another physician there?

A. No, there wasn't another physician in the typhus station

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perhaps Dr. Paulsen from Norway.

Q. Paulsen?

A. Yes.

Q Very well. Well, you were saying that Mr. Haagen was vaccinating the first group against typhus. Can you tell us exactly what vaccine he used?

A No.

Q How about the second group?

A The second group was merely strengthened with food and then worked upon anew.

Q The first group was vaccinated, and the second group was not. These were the stronger people.

A The stronger people were used for the second group.

Q And now you are saying that after some time everybody started to work again. Well, what was the length of time between these two experiments?

A Only a few days.

Q Now, witness, it is important to know what the second work of Haagen constituted. The prosecution asked you this morning if Haagen injected into these inmates artificial infectious typhus vaccine, and you said yes. Witness, what do you understand by artificial infectious typhus vaccine?

MR. HARRY: The prosecution did not say vaccine.

BY DR. TIPP:

Q Pardon me, what I just mentioned was typhus medium, artificial infectious typhus medium, what do you understand that to mean?

A I can't judge that.

Q How do you know that it was artificial infectious typhus?

A Well, we heard that —

Q One minute, witness. I don't want to hear any conclusions from you. The Tribunal wants to know what you really know from your knowledge, and now you say that you cannot really judge whether it was really artificial infectious typhus, that is, from what you just —

MR. HARDY: Your Honor, the defense put a question to the witness and the witness proceeded to answer it, and he interrupted him. I request that the witness be permitted to answer that question.

THE TRIBUNAL: The witness may answer the question. The interpreter will read the question.

BY DR. TIFF:

Q I am asking, since you cannot judge it, how do you know that Mr. Haagen was using Artificial infectious typhus?

A The Professor spoke to the inmate physician in this department and made no secret of it. He told us about his work, and that was when we were all present.

Q Well, what did he tell you about his work?

A Well, I can't repeat that to you exactly.

Q Well, in that case how can you maintain that he used artificial infectious typhus if you cannot judge that from your own knowledge, and if you can no longer tell us what Mr. Haagen has told the inmate physician?

A Well, as far as I can judge it, if one receives typhus normally, one gets it through lice or unclean conditions, but these people were entirely clean. Therefore, they must have been infected with an artificial medium. Even if you are not a physician you can judge that.

Q Well, witness, I am repeating that you are merely giving us a conclusion. But that that does not constitute a knowledge. Finally, let me establish that you really do not know whether Haagen actually worked with infectious typhus —

MR. HARDY: May I suggest that defense counsel interrogate the witness, not argue with him?

THE PRESIDENT: Counsel is proceeding in order. You may proceed, excepting a little more slowly.

BY DR. TIFF:

Q Very well, witness. Now, another question. What was the success of the introduction of the vaccine, or this artificial infectious

typhus; will you please talk a little slower?

A It occurred just as in the case of normal typhus. There was high fever, collapse, it is ordinary in the case of typhus, one saw all the normal symptoms of a typhus patient. The one group which received vaccinations did not show as severe symptoms as the other group, which did not receive these vaccinations. In other words, they did not experience such high fevers except in the case of a few individuals. I know that from my own knowledge because I measured the fever myself.

Q In that case you are saying, witness, the patient had high fever?

A Yes.

Q I did not quite understand your further statement. What do you mean by "collapse", or "kollapieren"?

A Collapse, I think, means if the curve goes way up and then suddenly drops down, as far as I can judge that as a nurse.

Q In other words, you are saying that the inmates had high fever, and that fever dropped abruptly. What other symptoms did you notice in the case of these inmates, witness?

A I can't tell you any other symptoms.

Q In other words, the inmates had high fever. Is high fever necessarily a sign of typhus, witness?

A No, certainly not. But Professor Haagen said publicly that these were typhus experiments.

Q Unfortunately, I must once more establish, witness, that Mr. Haagen told you that these were typhus experiments. May I perhaps put to you that he may have spoken of typhus vaccine experiments?

A That I cannot say, I really don't know.

Q In any case, witness, you can't tell us with certainty from your own knowledge that these inmates contracted typhus?

A No.

Q I think that this answers my questions.

A But I must tell you one thing, the blood tests taken from these inmates were sent to Strassbourg together with tests of all the normal typhus cases.

Q I beg your pardon, witness, what do you mean by normal typhus cases?

A I mean those cases which were already in the camp, that is, those who were sent to the camp suffering with typhus; but the typhus cases came from Auschwitz.

Q You were saying that the blood tests were sent to Strassbourg. Now, witness, you are not a physician. At any rate, you were working long enough at a so-called experimental station, may I perhaps ask you — did you at any time hear of the so-called Weil-Felix reaction?

A Yes.

Q Do you know what is meant by that?

A Yes, in my opinion this is the blood test according to Weil-Felix. This is a blood examination which was invented by Weil-Felix.

Q I think we understand each other, witness. You are saying that the Weil-Felix reaction is called after the two men who used this test for the first time by the name of Weil and Felix. What does one establish by this Weil-Felix reaction, do you know that?

A The state of the blood, I cannot really judge that.

Q Now, witness, if I were to tell you know that one establishes, by using the Weil-Felix reactions what resistance there is to be found in the blood, would that be something new to you?

A Yes, I think so, but I forgot it again.

Q At any rate, you do know that these people who were treated by Dr. Haagen received high fever, blood tests were taken from their bodies, and you also know that these blood tests were sent to Strassbourg for examination together with blood tests of the normal typhus cases?

A Yes. But they may have also been sent to other places.

Q Very well. I don't want to argue with you about that subject.

Witness, you were a nurse at this station, and you asserted you nursed these inmates yourself, is that true?

A Yes.

Q Then did these feverish symptoms occur?

A Well, I really can't tell you that exactly. I do not know the exact course of the illness.

Q Now, witness, if you are so well informed about these matters, you must be in a position to tell the Tribunal approximately when these symptoms occurred after two days, three days, fourteen days?

A Well, I think they occurred after 10 or 12 days.

Q And when, witness, did the individual people die? I mean, the persons of whom you were speaking this morning and this afternoon.

A You mean as of what date they died? I think that it started approximately at the end of December 1943.

Q Let me clarify my question. I am now speaking of the death cases as they arose from this experimental group?

A Yes, I understand you.

Q As you were saying this experimental group was started at the end of November or the beginning of December, and when did the first death cases occur?

A I think that these occurred towards the middle of December.

Q Now, witness, can you tell us with certainty what the cause of the death was?

A No, I cannot tell you.

Q When did the other death cases occur?

A During the subsequent periods. Two days later there was a one, a few days later there was another one, and so on.

Q We have the death book before us, witness, and I shall come back to that later; but couldn't you ascertain by using the death book exactly when these death cases occurred? May I perhaps help you? You were speaking about the 12th line of page 36.

A I beg your pardon, I make a mistake. I think I got my dates mixed up. I think I made a mistake in giving you some of the dates. If I correct myself, the experiments started approximately at the middle of November. Many years have passed since, and this is my only help. The group of these 18 people was already entered in November.

Q Now, witness, I must put something to you. At first, you said that the experiments started at the end of November. Now, you say, looking at the book, that there were already death cases in November, and in order to connect these death cases with the experiments you are now saying they actually started in the beginning of November. Isn't this error due to the fact that you want to connect these death cases with what you were telling us before?

A No.

Q Now, witness, how do you know that this group of 18 gypsies which is entered here are actually persons who belonged to Hagen's group?

A These people were not entered with their names and their numbers. I mean, the camp administration book, the camp registry book, where every inmate was entered with name and number.

Q How do you know that?

A Well, I do know it. Every inmate who comes to the Natzweiler concentration camp had to pass through the hospital.

Q How do you know that just this gypsy group was not entered there?

A Because I was present when they arrived. They arrived on a Sunday.

Q When this experimental group came to the hospital you, yourself, were present, witness?

A Yes.

Q And on this occasion you found out that these persons were not entered?

A Certainly, I am quite sure of that.

Q Why was that, witness?

A I can't tell you.

Q Was that ordered specifically -- was it forbidden specifically that these people be entered?

A I really can't tell you.

Q Weren't these names ascertained at the experimental station?

A Oh yes, I knew that one was called Joseph and one had another name, but of course I can't tell you that with certainty now.

Q Witness, from the fact that these infants were not registered in the camp at their arrival, and from the fact that here in the book we find a group of 18 gypsies, without names, you conclude that we are here concerned with the people coming from that group -- but that is merely a conclusion on your part?

A No, that is a fact. These people were not entered.

Q Now witness, you are saying that is a fact but in that connection I must ask you the following: Who exactly made the entries into the death book?

A The clerks -- the inmate clerks.

Q Not yourself?

A No.

Q Well, in that case you really cannot tell us why this clerk left the names out?

A Well, the clerk did not know their names.

Q Witness, when this group arrived in the camp you were accidentally present?

A That was not an accident. That was quite normal.

Q Were you always there?

A Yes, I was always there when they arrived.

Q In that case, do you mean to say that in the case of every new influx of people into the group, you were present?

A Of course there were transports when I was not present but every transport had to go through the hospital.

Q Now let me establish the following thing, witness. Can you state that this group of 90 gypsies was the only group whose names were not entered?

A There were other gypsies.

Q You mean other groups whose names were not entered?

A Yes.

Q Well, then, how can you tell us that those gypsies who have no names are identical with the experimental subjects?

A I can tell you that because the other persons in the preceding transport arrived and left again and were not accepted into the camp proper.

Q But witness, you cannot exclude, if I understand you correctly, that other groups arrived at the camp whose names were not registered?

A Yes, but that was at an earlier date.

Q Well, how do you know that?

A A number of Jews, for instance, arrived at the camp, who left a day later. They were not registered and they were not any death cases.

Q At any rate, witness, I can establish that you yourself did not register these people into the death book.

A No, not into the official death book.

Q Let me furthermore state that your assumption that these 18 copies came from Haagen's experiments is only a conclusion on your part. Witness, you have already said that you did not yourself enter these cases into the death book. Now please tell us, witness, how this copy originated which you have submitted to the Tribunal.

A I was always interested in getting hold of these names because I, as a Dutchman, knew that one day I would be free and I did want to know who found his death from our people in order that I might get back and say that these and these people died at the camp of Natzweiler. All these people were Nacht und Nebel prisoners; they were not openly registered; I only did that in the interest of my citizens.

Q Do not misunderstand me, witness. I do not in any way want to reprimand you because of that. I only want to find out how you got the original death book.

A Oh, I had access to it every day. I was in the hospital and I could take hold of the original book every day. I could do that for hours, if I wanted to; even if SS physicians were present; it was something quite ordinary.

Q And by using these entries in the original book you compiled this copy which was submitted by you?

A Yes, it was copied by me.

Q Does this copy correspond with the original in all its details?

A Yes, exactly.

Q Witness, let me finish this typhus complex. I should like to know how Haagen's work was being carried through. You were present when the first group received these protective vaccinations. How were these vaccinations carried out?

A Professor Haagen did them in collaboration with an assistant.

Q What I am asking you, witness, is how were they vaccinated — intramuscular, intravenous, or how?

A I cannot tell you that exactly. I was standing at the ent-

rance and it was my duty to let these people in.

Q In that case you weren't present during the vaccination itself?

A Well, I was in the room.

Q But you didn't see whether Haagen injected or what he did?

A I really didn't see whether it was intramuscular injection or an intravenous injection.

Q And the second treatment which you think was an infectious treatment, how was that carried through?

A It may have been done in the same way. I can't tell you that exactly.

Q Witness, another question with reference to the death book. A little earlier, in the case of one name, you have stated that you knew exactly that this death came as a result of the experiment, because you added a "V" to that name. Now does that "V" mean?

A The V means Versuch - experiment. I merely indicated that personally. That was not in the death book.

Q Witness, you are a Dutchman, aren't you? Do you use the German language so often that even in case of such a notation you use a German word?

A No, I really don't use the German language at all but at that time I certainly did. Sometimes, after I came home, and I can tell you that, some Dutchmen pointed out to me that I have to learn to speak Dutch properly once more. For 5 years I had to speak German and therefore I often make mistakes in Dutch and even today it occurs that I make a mistake.

Q You were saying that you abbreviated the German word "versuch" with a "V". Now, witness, let us depart from the typhus experiments and go over to the further work of Dr. Haagen. You were telling us that Dr. Haagen, in May of 1944, once more went to Natzweiler, is that true?

A I have said that either the end of April or the beginning

of May.

Q During this time, witness, was another typhus vaccination or something carried through?

A I can't tell you that exactly. I only know that Professor Hagen, in the case of normal typhus patients, had ordered blood tests to be carried through and sometimes carried them through himself.

Q Now, witness, if I understand you correctly, there were normal typhus cases in the camp too?

A Yes.

Q Were they very numerous in the summer of 1944 or the spring of 1944?

A Well, there were about 40 cases. I was not working in that department and I really can't tell you that exactly but I do think there were about 40 or 50 cases.

Q Isn't it true, witness, that in the spring or summer of 1944 there was a regular typhus epidemic in the camp?

A No.

Q Witness, you yourself were not a nurse in the typhus block were you?

A No.

Q Do you know the witness Grandjean?

A Yes.

Q Do you think Grandjean is a reliable and credible person?

A Yes.

Q Now if I tell you now that Mr. Grandjean, here as a witness before this Tribunal, has appeared in the same way as you have, and has testified, under oath, that he was a nurse in the typhus block and that the number of typhus cases in the spring and summer of 1944 amounted to 1200, would you say that Mr. Grandjean has lied?

A Certainly.

Q But you were just telling us that Mr. Grandjean was a reliable man. Now you say that he has lied. Why?

A In the whole camp there were only about 1200 people and I am now talking about the Natzweiler Mother Camp. At the most there were 2,000 at the last moment.

Q Witness, perhaps this apparent contradiction can be cleared up that Grandjean certainly did not say that these 1200 cases occurred at one time but that, one after another, throughout the year, there were 1200 cases.

A Well, that is possible.

MR. HARDY: Your Honor, I wish when defense counsel refers to the testimony of Grandjean he quotes the record exactly as Grandjean testified. I think this will deceive the witness here.

DR. TIPP: I haven't the testimony of Grandjean before me but I shall be able to ascertain the exact page number during the recess and will then be able to inform the Tribunal as to when he appeared.

MR. HARDY: There were a number of camps in camps outside the Mother Camp, as Grandjean testified.

THE PRESIDENT: The Tribunal will now be in recess and then the matter may be investigated.

(A recess was taken.)

THE CHAIRMAN: The Tribunal is again in session.

DR. TIPP: Mr. President, in accordance with the request of Mr. Hardy, I have determined when the witness Grandjean testified here. He was here as a witness on 6 January 1947, his testimony is on page 1099 of the English record, page 1145 of the German.

The testimony of the witness Holl is also of interest in this connection. He was here on 3 January 1947, his testimony is on page 1058 of the English record, page 1098 of the German.

BY DR. TIPP:

Q Witness, we stopped at the typhus epidemic in Natzweiler. I put to you the testimony of Nurse Grandjean, who said there was a total number of 1,200 cases of typhus and I believe I understood you correctly that you conceded this number might be right. If one took all cases together; is that true?

A Including the outside camps, that might be right.

Q Grandjean was including the outside camps, yes. Witness, I should like to go on to another subject you discussed, the poison gas experiments, which Mr. Haagen allegedly carried out. As far as I can recall, you said Haagen came back about the end of April or beginning of May in 1944; is that right?

A Yes.

Q Well, then will you please tell us from your own knowledge what you know about these gas experiments?

A Professor Haagen came back about this time, he had people picked out again from among the gypsies who were in the camp, who were in a certain block and he put them in the same two rooms.

Q May I interrupt you a moment; how do you know who selected the experimental subjects?

A They were selected by the camp doctor and told to come to the prisoner's hospital, they came early in the morning or at noon, I don't remember exactly and Haagen and the camp doctor picked them out.

Q How many people were taken out of these blocks as possible

experimental subjects; was it a large number or a few?

A I believe eight, there were four groups.

Q. Do I understand you correctly? Did you say eight?

A. Perhaps eight, about eight.

Q. The experiments were carried out on eight persons?

A. Yes.

Q. I believe you said this morning that these experimental subjects included some gypsies who had already been in the typhus experiments, is that true?

A. Yes.

Q. Now, do you know whether Mr. Haagen ordered the people to come to the hospital and from what group of persons these people were taken or whether it was a camp doctor who did this? Do you know anything about this?

A. No, I only know that perhaps an orders from above — I don't know — the camp doctor ordered them to come to the hospital and Haagen and the SS camp doctor selected them; but primarily Haagen.

Q. Witness, do you know Professor Haagen well?

A. I saw a great deal of him.

Q. Well, the Court has seen Mr. Haagen too. Can you please describe to us what Mr. Haagen looks like?

A. Well, he is about one meter sixty-eight tall. He had gray hair. He wore a Luftwaffe uniform, blue-gray. He had a white epaulet, a golden staff of Asculapius. He was not fat, but rather stout.

Q. You knew Mr. Haagen from the typhus experiment?

A. Yes.

Q. Now, did he carry out these typhus experiments alone?

A. Yes.

Q. Was no one ever there?

A. No — there were visitors sometimes.

Q. Now, I must put some other testimony before you, witness:
A witness, Hirtz, whom we heard here said that Mr. Haagen came with another Stabsarzt of the Luftwaffe.

A. No, sometimes people came alone and sometimes not, but

occasionally he brought somebody along.

Q. But when the injections were made nobody was there.

A. No, only the assistants.

Q. It was a female assistant?

A. Yes.

Q. There was no other officer there?

A. No.

Q. Now, what happened in this gassing experiment, Witness? Just briefly.

A. I have already said that Professor Haagen divided these people into four groups. I am assuming this number, eight. It might have been ten. And then he went down with one group each time and he took a drinking cup and an ampule, a white ampule, that he brought with him in a big box. It was put in soot or something like that. It was very well packed. He took that out and he took the people down or else he sent for them; he had gone ahead, and then they came back and were put to bed.

Q. Just a minute, Witness, what actually happened to these people when they were away from the hospital until they came back. You don't know that?

A. No.

Q. And you don't know whether Mr. Haagen performed experiments on these people in the meantime or whether somebody else did it and maybe Haagen was only the assistant. You can't say that?

A. No.

Q. Now, what did the people look like when they came back?

A. The first were not seriously affected. They were used again later. And became worse and worse. When the worst came the people were trying hard to breathe. They couldn't get air; they had foam at their mouth. Terrible, terrible to look at. I can't judge, of course. I only know that the diagnosis when they died was lung edema. That was determined by Professor Haagen and some of the prisoner-doctors, including

this Dr. Kredit, the Dutch doctor!

Q. You said, Witness, I believe, three people died of these experiments, is that right?

A. Five, and some died in Dachau too.

Q. How do you know that.

A. I went with an evacuation from Natzweiler to Dachau with the sick transport. There was a train with thirteen hundred patients and these people were among them. I know that on the way some of them died. We had one car for this ward and another car for that ward, and so we had the cases sorted. And Dr. Kredit reported that these people had died, but I don't remember the names.

Q. Now, how many of these people died while they were still in Natzweiler and how many died in Dachau?

A. I can only say that I saw some of them in Dachau. One was in the hospital with me for something -- had something the matter with his lungs.

Q. And how many dead people from these experiments did you yourself see in Natzweiler?

A. Five.

Q. Those are the five in the book here?

A. Yes.

Q. Now, can you, opening the book, Witness, tell from the book when these people died? Can you see that from the entry?

A. The month, yes.

Q. Now, Witness, how does it happen that only the month is entered and not the day?

A. The dates were not always given, the dates. Sometimes the report came up. It was always reported to the SS and the date wasn't important, only the month.

Q. But if I understood you correctly before, you said that the death record from which you copied this list was kept in the hospital.

A. Yes.

Q. And was kept by prisoners?

A. Yes.

Q. Now, Witness, it seems rather remarkable that prisoners would not have enough interest in their dead comrades to record the date of the death, especially since you say that there was the intention of notifying the relatives later.

A. If you will look at the book you will see that in the cases of the Dutchmen -- and I was a Dutchman -- I wrote down the exact dates or had them written down, because I was especially interested. The other prisoners, too; but I was interested in my Dutch comrades, and if you look at the Book you will see that in the cases of the Dutchmen the exact date is given.

Q. Well, Witness, are these exact dates given in your copy too?

A. Of the Dutchmen? Yes they are.

Q. Now, Witness, to go back to Mr. Haagen: Can you say definitely that Mr. Haagen carried out these experiments or is there a possibility that you are confusing Haagen with some other Luftwaaffe doctor who was also a Stabsarzt -- captain -- and who to your knowledge actually did carry out such experiments in Natzweiler?

A. What experiments are you talking about, the typhus experiments?

Q. No, I mean the gas experiments.

A. I know only that Haagen only -- was the only one who came to the camp and was the only one who had the interest of having the case history recorded.

Q. You think you can exclude any mistake then?

A. Yes, it is quite impossible.

Q. But whether Haagen actually carried out the experiments, you don't know?

A. No.

Q. Now, Witness, a final question on the witness, Dr. Kredit. Kredit

was a Dutchman, I believe.

A. Yes.

Q. Can you tell us whether Dr. Kredit died?

A. In February, 1945, in Dachau.

DR. TIPP: Then I have no further questions, Mr. President.

THE PRESIDENT: Any further cross-examination by any of the Defense Counsel?

(There was none.)

Has Counsel for the Prosecution any redirect examination?

MR. HARDY: The Prosecution has no further questions, your Honor.

THE PRESIDENT: The witness is excused from the stand.

(The witness, Males, left the witness-stand.)

I understand that Counsel for the Defendant Becker-Freyseng has some documents to offer.

MR. HARDY: May I inquire at this time whether other Defense Counsel will be prepared to put on their documentary evidence? It seems to me that some of these translations should be through by now.

THE PRESIDENT: Is there any other Defense Counsel prepared with any of the documents which are to be offered in evidence?

MR. HARDY: I think Dr. Wille has one document.

DR. WILLE: I have a single document to offer.

THE PRESIDENT: Will Dr. Wille have any further documents?

DR. WILLE: No, only one.

THE PRESIDENT: Dr. Wille may offer that document at this time.

DR. WILLE: Mr. President, this is Weltz 25. I have —

THE PRESIDENT: Is that document available to the Tribunal?

DR. WILLE: Yes.

THE PRESIDENT: Will you hand them to the Tribunal?

DR. WILLE: I offer this document as Weltz Exhibit 24.

The event described in this document is a visit of Professor Alexander to Hirschau where the aviation medicine institute of

Professor Waltze was at that time. I do not believe it will be necessary to read the document, although it is quite short. I shall merely refer to the contents and ask that it be accepted in evidence.

THE PRESIDENT: That exhibit number do you assign to this document?

DR. WILLE: Twenty-four.

THE PRESIDENT: The document will be received in evidence.

DR. WILLE: Mr. President, may I come back to my presentation of documents of Saturday? I have investigated. The President said that the so-called document book was not supplied with numbers and there was no index. I have inquired in the meantime. There was a misunderstanding in the translation division which has been cleared up in the meantime. I had only one document, which is very extensive. I had given it to the translation section and it was mistakenly treated as a document book. That is why there were no numbers and not an index.

MR. HARDY: I may inquire whether Dr. Gawlik has any further supplemental evidence inasmuch as I have not any other document books for the Defendant Hoven, perhaps he has already completed his documentary evidence.

THE PRESIDENT: Has Counsel for the Defendant Hoven any further documents to offer?

DR. GAWLIK: At the moment I cannot say, Mr. President. I am still busy preparing my final rebuttal material.

MR. HARDY: That should have been all prepared by now, Your Honor.

THE PRESIDENT: If there are any further documents to be offered and if they are not in the hands of the translation department, it is very doubtful that they will be prepared in time to be offered.

DR. GAWLIK: The material was offered last week; I really must have a little time to refute it. I am not in the fortunate position of the Prosecution, to be able to get in a car and drive to distant areas and get witnesses.

MR. HARDY: I don't understand what the Defendant's Counsel means by "evidence offered last week." This is rebuttal evidence, Your Honor. If this continues we will be here until next December, letting them answer our rebuttal evidence.

THE PRESIDENT: I don't know — the rebuttal evidence admitted was—

DR. GAVLIE: I am speaking of refuting the material offered by the Prosecution in regard to the Defendant Hoven, on Wednesday of last week, during cross examination. It is not possible for me within three or four days to obtain the evidence. I am endeavoring to rebut these documents which have been offered. But if the Prosecution offers this material so late it is an affidavit of Ackermann of the 21st of March which the Prosecution was only offering now, I believe that I am justified in asking for a few days at least.

MR. HARDY: I am sorry, I can't see the justification, your Honor; but I would like to know from other Defense Counsel how many of them have their documents ready and can they present a list to the Tribunal of when they will approximately be ready to present these documents so that we will be able to ascertain whether we should sit nights. We might run out of evidence and have to adjourn. The Prosecution is nearly finished. We may have two or three little jobs to clean up our case, but other than that we have these documents marked for identification which I am endeavoring to get together, and I have perhaps another way that I am entitled to in the case of the rebuttal. They have two more days left — that is Tuesday and Wednesday. And if they don't have any material ready, then we won't finish this week.

THE PRESIDENT: I understood when I asked Counsel for the Defense questions the other day that they would be ready by Wednesday and I also understood all the documents they wanted were in the hands of the translation department and that the delay was occasioned in the translation department in furnishing the documents. No one suggested then, as I remember, that there were further documents to be offered to the

translators.

DR. GAWLIK: Mr. President, it is only material to refute the rebuttal material. We have to have that opportunity. If the Prosecution waits until the last minute and then offers evidence, ~~then~~ we have to have a certain amount of time to be able to refute it.

THE PRESIDENT: Just what evidence are you referring to as rebuttal evidence, Doctor? You referred a moment ago to the cross-examination of the Defendant Hoven. That isn't rebuttal evidence.

DR. GAWLIX: I beg your pardon. I mean the material which was shown to the defendant Hoven last Wednesday in cross examination. I am trying to refute that. It has not been possible to find the witnesses from whom I want affidavits, to get them here by now. I assume that they will be here tomorrow or the next day but I can't do it any quicker; because the prosecution doesn't offer the evidence sooner, it is not my fault, Mr. President.

MR. HARDY: Your Honor, it is my understanding — maybe I am subject to correction — it has been my understanding that these documents that the prosecution used during the course of cross examination were rebuttal documents in the true sense of the word and because of that understanding the Tribunal ruled that our documents would be offered formally during the course of our rebuttal and that they would be marked for identification during the cross examination period.

Now, it is my position that those documents marked for identification are rebuttal documents and he had ample time. He got them two, three or four months ahead of the actual rebuttal. The cross examination of Hoven, true, was last week but there was nothing new to speak of brought out in the cross examination of Hoven.

THE PRESIDENT: The documents offered by the prosecution and marked as identification during the examination of the defendants were furnished to the defendants long ago. Copies were offered to most of the defendants. Of course, those defendants whose cases came last did not receive them quite so soon but those documents are proper rebuttal evidence, as stated by counsel for the prosecution; at least, I assume that there is no evidence in them that is not proper rebuttal testimony. I know that most of them was proper rebuttal evidence. If there was evidence in those document that in no way concerns the defendants' defense, it might be said to be original evidence but I do not think there was much of that.

Now, those documents marked in defendant Hoven's case were heard during the close of the case but counsel has had those documents

for some time. If the witnesses are not available, that might be true of some witnesses who would not get here until next Fall and we cannot wait indefinitely on the procuring of witnesses. It is unfortunate that witnesses are not readily available but it is a grim fact and this evidence must be closed; and I will hear from counsel at any time — tomorrow or Wednesday — if he can procure any documents but documents which will not be prepared until after that and then will not be referred to the translation department I see very little chance of those documents being received in evidence.

Counsel may present any particular situations to the Tribunal. I will always listen to him but, as stated some days since this evidence has reached the point where it must reach a final determination.

If counsel has a witness tomorrow and can procure an affidavit, I will endeavor to expedite his translation. I have already talked to the translation department in an endeavor to expedite these matters. I will speak again, but the material must be here for the translators to work upon.

DR. GAMLIK: Mr. President, may I say something? I am trying to obtain it as quickly as possible? It is not material which goes back for months. It is a question of refuting the affidavit of Ackermann dated 21 March which was offered last Wednesday. I had no knowledge of this beforehand and therefore could not refute it. If the prosecution asserts that it is immaterial, it would be different — it was a completely new affidavit of which I have had no previous knowledge.

MR. HARDY: And it was in the nature of rebuttal evidence, Your Honor, and the prosecution feels it was proper evidence to be offered on cross examination.

THE PRESIDENT: In every case there always comes a point where there is an examination of the defendant and then a cross examination and in that case evidence is properly identified to be offered as rebuttal evidence.

If counsel can suggest anyway by which he can procure further affidavits within the time specified the other day by the Tribunal I will be glad to do anything within my power to assist in the presentation of that evidence. If counsel will see what he can do and the Tribunal will endeavor to procure evidence insofar as possible, but it must come to an end some time.

DR. GAWLIK: Very well, Mr. President.

MR. HARDY: Will a committee of defense counsel, maybe two of them, make a schedule out today or this evening to show the Tribunal how the rest of this evidence will be presented? Prosecution is endeavoring to pick up shreds of evidence and put it in to take up the time and, of course, we have our problems, too, and we are only two or three men as opposed to twenty-three of defense counsel. I would like to get a schedule to show how they are going to put in their document books and who has to complete them. There may be some defendants who have none.

THE PRESIDENT: Then we can judge the time. If the counsel for the defendants will get together and furnish such a statement to the Tribunal and to the counsel for prosecution, it will be appreciated and, if they will, do that this evening and furnish such a statement tomorrow morning as to what documents they will have to present and when they expect to present it.

Counsel for Becker-Freyseng may proceed with the introduction of his documents and Dr. Nelte has some.

DR. NELTE (Counsel for defendant Handloser): In an agreement with my colleague, Dr. Tipp, I have only two brief questions on which I should like to have a decision of the Tribunal.

On 18 June 1947 I offered an application to the Tribunal. It dealt with a questionnaire to Dr. Balachowsky. On the 8th of January, on the day when the prosecution submitted the affidavit of Dr. Balachowsky here, I, according to the instructions of the Tribunal, submitted a questionnaire, as prescribed, to the General Secretary and asked that

this questionnaire be given to Dr. Balachowsky so that I could use it as evidence. This application was made on the 8th of January 1947 but I receive no answer.

Every month I have asked the Secretary General's office about it and every month I was told that efforts were being made but that no answer had been obtained yet. I am not in a position to obtain this affidavit from Dr. Balachowsky -- or, rather, the answer to the questions. I believe that this is an approved cross examination. If the witness does not appear, then what is said in his affidavit against Professor Handloser cannot be used as evidence. Therefore, on the 18th of June I submitted an application to the Tribunal that the affidavit of Dr. Balachowsky insofar as it contains statements concerning the Defendant Handloser should not be admitted in evidence and I ask for a decision on this application before I lose all opportunity of submitting further evidence.

THE PRESIDENT: For a ruling on such a question the Tribunal would like to know what has become of the application which was filed in January. Of course, I don't remember it among the many dozens of applications which have come to my desk. I would suggest that counsel go to the office of the Secretary-General and ask that the original application be traced and find out when it was filed and if it is there -- if not, if they have any idea what has become of it. It has always been my endeavor to have the Tribunal rule on the applications very promptly. It is possible one may have been lost or mislaid. I don't know. I have no recollection of that particular application.

DR. WHITE: On the 8th of January I did not make an application to this Tribunal. I submitted a questionnaire to the Tribunal asking that it be sent on to Dr. Balachowsky.

THE PRESIDENT: That is not an application? That is what I refer to. It is an application for interrogation on questions. Whether it is an affidavit for a witness or interrogation, I refer to them all as applications; but my suggestion is that counsel immediately go to the

office of the Secretary-General and find out what record they have of that application, if any, if they have any way of ascertaining where it is or what has become of it.

DR. MELTZ: Then there is a second matter, Mr. President. The prosecution has submitted a new document book XVIII. In this document book there is a sworn statement of Professor Reiter of 29 March 1947 concerning a typhus conference 29 December 1941. This is document NO2506. The prosecution has offered this as a rebuttal to the affidavit made for Professor Handloser, Document No25, Exhibit 10. It is the only document in this document book XVIII which affects the defendant Handloser. I offer a document in evidence in that connection, Professor Reiter himself, according to the information of the Security office is in the Hospital and since he has already made two affidavits I do not intend to ask him for a third; but I have in my possession a statement which Professor Reiter gave to me when I asked him about an affidavit and wanted to determine whether he had already made any statement on the typhus conference 29 December 1941. Then I said to him that in making an affidavit as I wanted it he should take into consideration what he had already stated, he said that on 22 November 1946 he had been interrogated by the prosecution.

THE PRESIDENT: Counsel, let me ask you, I understand that you have an unsworn statement from Dr. Reiter; is that correct?

DR. MELTZ: I do not have another affidavit, but a statement by Professor Reiter.

THE PRESIDENT: I said an unsworn statement, not an affidavit, but a statement by him without an oath, without a jurat; is that correct?

DR. MELTZ: Yes, Mr. President, but it was not given to me but to the Prosecution.

THE PRESIDENT: Well, do you wish to introduce it in evidence or what is your desire?

DR. MELTZ: Yes, I want to submit it in evidence because it contradicts the statement which Professor Reiter made for the Prosecution as an affidavit.

THE PRESIDENT: Well, you submit the statement to the Prosecution and possibly he will agree and maybe admit it, I don't know.

MR. HARDY: I absolutely will not agree to the admission of it, your Honor. I do not know whether I ever had it or not. If the prosecution had it Dr. Melts certainly would not have it in his hand, but be that as it may, he submitted an affidavit from Professor Reiter. The prosecution then submitted a cross affidavit from Professor Reiter pertaining to the facts in the direct affidavit by defense counsel.

The proposition is as simple as that. I don't see any need for further evidence from Reiter.

THE PRESIDENT: Well, counsel has no affidavit from Dr. Reiter, and an unsworn statement would not be admissible over the objection of the prosecution.

DR. MELTZ: I believe, Mr. President, this is a misunderstanding. I offered an affidavit, and the Tribunal accepted it as Handloser Exhibit 10. The prosecution document 20-2506, was a second affidavit from Professor Reiter dealing with the same subject, as Document HA-25. In this affidavit Professor Reiter makes different statements than he

made on the 22d of November 1946 to the prosecution in writing, and for the evaluation of the probative value of the affidavit of Professor Reiter, I want to offer this statement which was made on the 22d of November to the prosecution.

MR. HARDY: You see, your Honor, if this was made to the prosecution I am sure it would be in my files. If Professor Reiter sat in his cell and wrote me a letter and never delivered it, that isn't something that I have received. This is not under oath. He executed an affidavit under oath for the defense counsel. Then we called him, presented that affidavit to him and asked him for other statements. He gave us statements and swore to those. What this piece of paper is is beyond me. He may well have written that in November.

THE PRESIDENT: Pass the paper to the Tribunal.

MR. HARDY: There is no receipt stamp that it has been received by my office.

DR. NELTS: Mr. President, this document is the copy signed by Professor Reiter of a document which he alleges he gave to the prosecution. If the prosecution says that they did not receive a document, then I offer it here for identification. Then the matter is settled -- then I won't offer it in evidence, if Mr. Hardy says that he never got this letter from Professor Reiter -- then the matter is settled.

MR. HARDY: I can state positively that Mr. Hardy never got it, your Honor.

THE PRESIDENT: Well, that only answers the question in part. If counsel for the prosecution would ascertain whether that letter is in the file of the prosecution -- someone else may have received it. I don't know who prepared the affidavit.

MR. HARDY: Your Honor, suppose it is in the file of the Prosecution? What is the point? I don't understand his trying to offer the document. It is not under oath. It's not a document; it's just a letter.

THE PRESIDENT: I understand, but if a paper writing shows

contradictions between statements made by a witness and it is contended that the affidavit prepared by one party does not conform with the statements made by the affiant, it might have relevancy, but Dr. Nolte has stated that if the prosecution will state it never received this document he will not offer it. It should be a comparatively simple matter to ask the office of the prosecution if anyone there ever received this document.

MR. HARDY: It would, and if we received it we would have it, your Honor, and defense counsel has it, so I am in a position now to say we never received it.

THE PRESIDENT: That doesn't altogether answer, because Dr. Reiter might have made two copies of the document.

MR. HARDY: Well, I will check with my files, your Honor, but I am sure that is the situation as I have outlined it to the Tribunal.

THE PRESIDENT: Very well, that will dispose of the matter if it is correct. If not, the Tribunal will consider it tomorrow.

MR. HARDY: Since this copy is addressed to the prosecution may I keep this, your Honor, to check with the other one?

DR. NELTE: Yes, there is a photostat too.

THE PRESIDENT: Counsel for Becker-Freysang.

DR. TIPP: Mr. President, first of all, from document book 1, Becker-Freysang, I should like to offer a few documents which deal primarily with experiments on human beings. From document book I I have already offered and assigned exhibit numbers to documents 1 to 7. Documents 8 and 9 I do not intend to offer.

THE PRESIDENT: Counsel, I didn't hear you. Would you please repeat that?

DR. TIPP: From document book 1 I intend to offer a few papers on human experimentation. First of all, I should like to say documents 1 to 7 have already been submitted. Documents 8 and 9 I do not intend to submit. The next document which I should like to offer is Becker-Freysang Number 10 which is on page 27 of the document book, and if it

is admitted I shall assign it the exhibit number 52. The document is the paper by Gill and Forbes.

THE PRESIDENT: Has counsel for the prosecution this document book?

MR. HARDY: Yes.

THE PRESIDENT: Is there any objection to the admission of this document?

MR. HARDY: Your Honor, I might ask defense counsel how many documents in document book number 1 he intends to submit, and I can look them over now and give him a blanket clearance or object to the ones I wish to object to.

DR. TIFF: In this book I intend to offer only Document 10 as Exhibit 52, Document 16 as Exhibit 53, and Document 17 as Exhibit 54.

MR. HARDY: I have no objection to any of those three, your Honor.

THE PRESIDENT: The documents will be received in evidence. Now, counsel gives to document 10 the exhibit number 52?

DR. TIFF: Yes, 52. 16 will be 53 and 17 will be 54. The other documents from this book I need not offer. Now I go on to document book 2. From this book I should like to offer documents 18, 19 and 20. The rest of the documents have already been offered. Document 18 is an extract from a scientific paper by Karl Kiskalt, Theory and Practice of Medical Research. It deals with the historical development of experimentation on human beings in general. I will assign exhibit number 55 to this document.

THE PRESIDENT: Will you repeat, counsel?

DR. TIFF: I offer Becker-Freysong document 18, Theory and Practice of Medical Research by Karl Kiskalt as exhibit number 55.

MR. HARDY: Your Honor, I have no objection to these three documents, 18, 19 and 20, and I might inquire of counsel if he intends to introduce document number 32 in this document book. It has not been introduced to date.

THE PRESIDENT: Counsel for the prosecution is correct that document 32 has not been introduced in evidence.

MR. HARDY: If he intends to introduce that, I have no objection either, your Honor.

DR. TIPP: This document, an affidavit of Professor Zugschwert, has already been offered as a Schroeder document and I enclose it in my document book merely for the sake of simplicity. I don't believe that a new exhibit number is necessary, and I don't believe I need to read from this document either. I go on to document book 3. From this document book I have only the last document, 59-A, an article from "Time", "Conscientious Objectors as Guinea Pigs". This will be Exhibit 57.

MR. HARDY: I must object to that being admitted into evidence, your Honor.

THE PRESIDENT: Objection to admission of this document is sustained.

DR. TIPP: Then in document book 4, from this book I intend to offer only documents 60 and 60-A. Professor Luxenburger of Munich was approved as an expert witness for the defense. He was to testify about experimentation on human beings. Since so much testimony has already been given on this problem, we have dispensed with this expert. He and his associate, Dr. Halbach, have recorded their attitude on this problem in an affidavit. I believe that this form will help the Tribunal more than testimony from the witness stand. The exhibit number would be 58 and 58-A.

THE PRESIDENT: What numbers were those, counsel? What number? What document?

DR. TIPP: 60 and 60-A in document book 4. Document 62, which is the only one which has not yet been offered, I do not intend to offer.

THE PRESIDENT: You must again give me the exhibit numbers for 60 and 60-A. Has counsel for the prosecution any objection?

MR. HARDY: I have no objection, your Honor, but I have no record that the other four documents were offered in evidence, any one of the other four. That's 61, 62, 63 and 64. They may have been while I was out of court. If they have been offered I would just like to get the numbers for my records here.

THE PRESIDENT: Document 63 was received in evidence as Exhibit 43, Becker-Frayseng.

MR. HARDY: And 64.

THE PRESIDENT: I have no record of 64 being offered.

MR. HARDY: Number 64 is Exhibit 7.

DR. TIPP (Counsel for the defendant Becker-Frayseng): Exhibit 7, Mr. President, 61 is Exhibit 20.

MR. HARDY: And 62 you do not intend to offer.

DR. TIPP: No.

THE PRESIDENT: I am sorry, counsel, but due to the conversation on the part of the prosecution, I still failed to get the exhibit number of 60 and 61-A.

DR. TIPP: 58 and 58-A.

THE PRESIDENT: I call it 58 and 59.

DR. TIPP: Very well.

THE PRESIDENT: You are not offering 61, 62, or 64, is that correct?

DR. TIPP: No. Mr. President, I am not offering 62. 63 is Exhibit number 43. Document 64 is Exhibit number 7.

THE PRESIDENT: Well, counsel, I have no record that 64 has been offered in evidence. You say it's been received as Exhibit number 7. I have no record of that, that may be true, but I have no record of that.

MR. HARDY: Your Honor, at this time, in this Document Book Index, Document Book Number 4, Document Number 60 is Exhibit Number 58; Document Number 60-A is Exhibit 59; Document Number 61 is Exhibit Number 20; Document Number 62 is being withdrawn; Document 63 is Exhibit 43; and Document 64 is Exhibit 7.

THE PRESIDENT: That agrees with the records for the counsel for the prosecution, the admission of Exhibits 20 and 7?

MR. HARDY: Maybe I was out of court that day. I have no objection to the offering of those affidavits with those Exhibit numbers.

DR. TIPP: Mr. President, perhaps I can explain that. Document 61

I offered in the examination of Becker-Freyseng to support the testimony of the witness; and in the same way, I offered Document 64 during the direct examination of Becker-Freyseng as Exhibit 7. Now, I come to Document 5 in the new Supplement Document Book. Document Book 5 has already been offered.

MR. HARDY: What Document Book Number 5? There are three documents, 72, 73 and 74 that have not been offered.

DR. TIPP: That is true. 72, 73, and 74 have not been offered.

THE PRESIDENT: I have 72 marked Exhibit 50.

DR. TIPP: Yes, the other two, 73 and 74, I will withdraw.

THE PRESIDENT: Document 67 is not marked as having been received.

MR. HARDY: Document 67, he intended to introduce that later. That is on —

DR. TIPP: Mr. President, 67 is an affidavit of Professor Matthes. That was originally to be offered because Professor Matthes sent us copies of two research assignments of the medical inspectorate. He gave the affidavit that the contents were correct. The Tribunal told me that I was to obtain the originals of these research assignments, since a copy certified by the witness was not sufficient. In the meantime, the witness had told me unfortunately he has only copies which are not certified. I am very sorry that I have to dispense with this evidence. Under the circumstances, I can not offer it, and I will withdraw it.

THE PRESIDENT: Just explain that situation again, counsel.

DR. TIPP: The Matthes document which Mr. Hardy mentioned, Document 67 is a statement of Professor Dr. Matthes in Erlangen about the way research assignments were issued, their contents, and so forth. I have already offered a number of affidavits on this point. To this affidavit were attached copies of one research assignment from the Medical Inspectorate to the witness Matthes, and one to a Leipzig institute at which the witness was working. The witness had said in his affidavit that the attachments, that is the research

assignments, were in order. When this document was offered, and the prosecution objected, the Tribunal decided that the original had to be offered, that a copy certified by the witness was not enough. I got in touch with the witness and Professor Matthes told me that he could give an affidavit to the effect that the copy agreed with the original, but he did not have the original; and therefore, I am withdrawing the exhibit because I can not conform with the directions of the Tribunal.

THE PRESIDENT: Well, the situation now is exactly the same as it was when the document was offered.

MR. HARDY: That's right.

THE PRESIDENT: And the question turns upon the authority of the witness Dr. Matthes to certify to certain documents to be true copies.

MR. HARDY: That's right.

THE PRESIDENT: In the absence of some extraordinary circumstances, the affiant, or the witness who makes an affidavit could not have the authority to certify that certain papers are true copies of other documents. The document in its present form was and is objectionable. The objection is sustained.

DR. TIPP: Then, I go on to Document Book Five, part 2, Becker-Freyseng. Document Book, 75, the affidavit of Professor Hagen which I showed to Professor Hagen in the examination and it was offered as Exhibit 51. The next Document is Document 76, an affidavit by Mrs. Viverowsky. It is on page 385.

THE PRESIDENT: 385 of what? I have the documents Becker-Freyseng I admitted as Exhibit 31; an affidavit of Eugen Hagen?

DR. TIPP: 51.

MR. HARDY: Your Honor, this document book that I have doesn't have the Hagen document in it, and in the index it is crossed out as if it wasn't to be introduced.

I suppose because we had Haagen here and heard him in direction testimony.

THE PRESIDENT: Well, I have before me a copy in English and a copy in German of an affidavit by Eugen Haagen. I have it marked Becker-Freysong Exhibit 51, 17 of June. It was not included in the document book. It is an unattached affidavit.

DR. TIPP: Mr. President, this affidavit which you just mentioned by Professor Haagen which I offered as Exhibit 51 was put in the index of this document book by mistake. It is not a second affidavit by Professor Haagen, it is the same one, but since the document itself has already been offered, we can strike it out here in the index.

THE PRESIDENT: Now, counsel, again what document book are you referring to. I have here before me a document book 5 for Becker-Freysong, but I have no part 2. I have it here. Very well, now if you will start over again with that.

DR. TIPP: I offer Becker-Freysong Document No. 76 as Exhibit 60. This is an affidavit of Mrs. Viverowsky. It is on page 385. I do not intend to read from this affidavit, Mr. President. I shall but point out that Mrs. Viverowsky worked for Professor Haagen for years. She worked primarily in the field of hepatitis epidemics, and she confirms as Professor Haagen himself said that no human experiments were carried out in this field. And I should also like to point out that on page 3, in the third paragraph, Mrs. Viverowsky says: "He..." meaning Professor Haagen "...used his new dry typhus vaccine at first on himself and Miss Crodel." The next sentences only refer to the witness herself. The next paragraph begins: "In 1944, I heard that a typhus epidemic had broken out in one of the camps. It had been brought by prisoners recently transferred from the East. Professor Haagen had a disinfecting station installed at the entrance to the camp. I do not know what was subsequently undertaken there. Fraulein Brigitte Crodel had to deal with the Weil-Felix reactions during this epidemic."

I shall merely refer to the rest of the contents of this document. The next document which I offer is Becker-Freyseng No. 77, Exhibit number 61. It is an affidavit by Dr. Frits Witt of Nuernberg. I should like to point out that Dr. Witt was a witness here on the 28th of February. I am offering this affidavit, Mr. President, to clear up the question of the file note referral numbers, and the organization of the medical inspectorate once more. I should like to call the attention of the Tribunal primarily to the drawing which is attached to this affidavit which shows the organization of the office of the chief of the Medical Service of the Luftwaffe as it actually was. I do not intend to quote from this document. The next document is Becker-Freyseng number 76 which I offer as Exhibit 62. It is an affidavit by Professor Dr. Knothe. It is on page 396 of the document book. Professor Knothe says that Becker-Freyseng suggested to him to set up a training company in the experiment station in the construction company at Juterbog, and Professor Knothe also says that this suggestion of Becker-Freyseng was refused by his superior. I believe I must offer that affidavit in order to show that Becker-Freyseng had no right to give orders as the prosecution alleged.

The next document is Docher-Fragung 72, as Exhibit 53. It is an affidavit by Professor Dr. Schall, the contents contain a description of a research assignment, how it came about. The witness says that there was no check, no control exerted, and there was no authority to issue orders on the part of the office which issued the assignment. I do not intend to quote from this document.

Mr. President, I should like to offer one more document in the following connection. The Court will remember that in the sea-water case, in the case of Document NK-105, there were considerable difficulties in translation. It is a letter from Schroeder to Mueller, drafted by Dr. Docher-Fragung. The Court will remember that the defense objected to the original translation of it by the Prosecution. The interpreters were asked to comment on this document and they said that the German text was not ambiguous. I was permitted to bring counter-evidence. I have obtained an opinion only now. Franz Rudolf Atten, the head of the English Department of the Interpretation Institute of the Heidelberg University has translated it. English copies are here and I should like the Secretary General to hand the English copies to the Tribunal.

Mr. President, I request that this matter be taken up outside the Court with the Prosecution and with the interpretation department. To have put in an alternative translation, certified by them in order to avoid confusion and argument; not having the facts familiar at my fingertips now, I wish that this could be taken up with the Prosecution outside the Tribunal and taken up before the Tribunal perhaps Wednesday or Thursday.

THE PRESIDENT: Counsel will discuss this matter with the Prosecution outside of Court this evening or some other time and see if any adjustment of the matter can be made, and then report to the Tribunal; or, if an agreement cannot be made, the matter should be brought before the Tribunal and settled by order.

Mr. Tippo: Very well.

Mr. President: I have 2 document books, Supplement No. 2 and No. 3 from Zeiglebeck. I wonder if Dr. Steinbauer has any other supplementary

books or are these the only two that he intends to put in? Perhaps he can put into evidence now. I won't object to either one of them I might add.

DR. WUNDERLICH (Counsel for the defendant Beiglboeck): From the list which the Prosecution offered today, about documents for identification, I have seen there are 2 Werlicke affidavits. The defense has no objection to these 2 documents because they are properly certified. Then I had the assignment from the Court regarding Exhibit 5, statement of the witness at the University Clinic, Professor Weinmayer, that this document should be certified. I wrote to Professor Weinmayer and now I have the certified copy, so that this document is in order now.

DR. WUNDERLICH: Was this one offered before as a Beiglboeck exhibit?

DR. WUNDERLICH: No, I gave it the old number - Exhibit No. 5.

DR. WUNDERLICH: The Prosecution has no objection now that it is in order, your Honor. Apparently the Tribunal admitted that provisionally.

THE PRESIDENT: I assume that it was admitted provisionally. Reference will be made to this matter in the record. That is that document number - Beiglboeck 5?

DR. WUNDERLICH: It is Beiglboeck Document 2h, which is Exhibit No. 5.

THE PRESIDENT: May the record show that Beiglboeck Document 2h, Beiglboeck Exhibit 5, was formally admitted in evidence, being correct in form.

DR. WUNDERLICH: And then the Tribunal asked me about a document which I offered in English - an excerpt from a book by Critchley to get German translations for the Tribunal and the Prosecution. I have had it translated and I give you copies now.

DR. WUNDERLICH: The document which you are getting a German copy of, your Honor, which is Beiglboeck Exhibit 37, rather Document No. 37, was Beiglboeck Exhibit No. 30, I believe.

DR. WUNDERLICH: Yes, it was Exhibit 30. It was just a German translation that was missing. Then, as Exhibit 36, I should like to offer affidavit of Dr. Walter Rode, from my Document Book 2. The number is 39. It was in the supplement on pages 148 to 154. I do not intend to read it, in order to save time. It is properly certified.

MR. BERRY: Does the Tribunal have copies of the English of Document Book 2, that is document 39, which just was offered as Exhibit 36 Baiglboeck?

THE PRESIDENT: Are those Defendant Baiglboeck document books? No, we haven't those here.

MR. BERRY: Here is one copy, your Honor, and the others can be picked up....

MR. STEINHAUER: I have them here.

MR. BERRY: Here are a sufficient number of copies.

MR. STEINHAUER: And here is the German. And then the last document which I intend to submit today will be Exhibit 37, the list of names of the gypsies.

THE PRESIDENT: Just a moment, Doctor, we haven't received those documents yet. Now what document are you offering, Doctor?

MR. STEINHAUER: A new document. I have already given the original to the Secretary General. It is part of Exhibit No. 34, a black cover with the names of the gypsies. Since the case is completed now I should like to offer this list officially. I have asked the General Secretary's office to prepare photostatic copies for the Tribunal and the Prosecution already has copies.

R. . . Your Honor, I don't think the introduction of the list as contained in the black cover is necessary as a separate number. I believe that the charts and the 2 books were introduced as Baiglboeck Exhibit 34 and the 2 books that are included in Exhibit 34 have one which has the black cover wherein, where these lists of names are found. I think it would save trouble and would not create too much difficulty if we continued to keep them under one number, 34, rather than submit the list on the cover of the black book as an additional number.

THE PRESIDENT: I understood Baiglboeck Document 39 has just been offered as Exhibit 34; am I wrong?

MR. BERRY: No, 36.

MR. STEINHAUER: Yes, the last number was 36, document 39, Exhibit 36, affidavit of Dr. Ed. Viktor Rohde. And now I wanted to give an exhibit number to the list of names but I agree with the prosecutor that it

is not necessary to give it a separate number. All I am interested in is that the list of names be made complete. On the photostat copy of the black cover there are 29 names. On the list, the fever charts, there are 11 other names; that makes 40 altogether. Daiglbach remembers definitely that the last experimental number was a person named Kieffer and 43 was somebody named Kieffer. The witness, Laufinger, said that Kieffer was in the experiment. The only ones that are missing, then are perhaps 20 and 42. On the occasion of the cross-examination of the witness, Daiglbach, by Mr. Cordy, he mentioned a name which is supposed to be No. 20. Since I do not have a list of my own I cannot check it, but that may be right. Then, of the whole number of names, only one is missing - that would be No. 42. I haven't found him on any list and it is impossible for me to tell the Tribunal what this last name is, that otherwise we have all the 43 names.

THE PRESIDENT: What was the exhibit number of that book itself?

MR. CORDY: The exhibit number of the charts and the 2 books that went over in the cross-examination of the defendant Daiglbach's, is Daiglbach Exhibit No. 34.

THE PRESIDENT: Are there any copies of these lists for the Tribunal?

MR. WHELAN: Yes, I can give you copies, but I asked the Secretary General's office to make photostatic copies and this gentleman here was kind enough to say he would take care of it and gave me a copy and the prosecutor a copy and I would like to ask him to give the Court 4 copies.

THE PRESIDENT: Then copies will be furnished to the Tribunal?

MR. CORDY: Your Honor, the photostatic copies of the page is not actually necessary. Dr. Steinbauer has made a certified copy of the names as written on the photostatic copy which I think would be sufficient, rather than having the book re-photostated. As a matter of fact....

THE PRESIDENT: If reference was merely to the photostatic copy of that page of the names.

MR. CORDY: That is what I mean. I mean it has been photostated

once and I have a copy and the Tribunal may have my copy if they wish and I will take one of these in lieu of it. I think this is sufficient.

THE PRESIDENT: Probably that typewritten list of names will answer the purpose of the Tribunal.

DR. STEINHAUER: Then I have.....

THE PRESIDENT: Just one moment. Now this list of names is supplementary to what Beiglboeck exhibit?

DR. HARRY: This list of names is the same list of names as contained in the black cover of the book that is in Exhibit 34.

THE PRESIDENT: Then this photostat and this list is a supplement to Beiglboeck Exhibit 34?

DR. STEINHAUER: Yes.

DR. HARRY: Yes, you can call it that, sir.

THE PRESIDENT: Proceed, doctor.

DR. STEINBAUER: I ask the Tribunal to approve an expert Dr. Glatzl from Flensburg. I have a statement from him in my Document Book No. 2, but it is inadequate since I could not give him any data on weight. I wrote to him and asked to come here or else to give me a written opinion. He promised to do so, but so far I have not received the opinion. Therefore, I asked the Tribunal to be able to offer this opinion if it arrives in a few days. Flensburg has very bad postal connections; it is in the British zone, and it wasn't possible to do this earlier. I believe the prosecutor will have no objection to this delay.

THE PRESIDENT: The Tribunal will hear from Counsel when the affidavit or statement or opinion or whatever he calls it is received. If it is received before Wednesday evening, it will certainly be admitted.

DR. STEINBAUER: And today I asked Mr. Hardy whether I can complete my closing brief and go away, leave Nurnberg, whether the water case is finished. He said, "Yes". I was very happy to hear this, but after the recess he told me that the prosecution intended to call the witness Karl Hoellenrainer again. Therefore, I should like to ask the prosecutor whether he gave me this information officially or whether that was not official?

MR. HARDY: Your Honor, the prosecution is entertaining the thought of perhaps recalling Hoellenrainer to get his testimony. However, as I say, we were merely entertaining the thought and Mr. McHoney and I were going to have a conference on it late this afternoon and I merely stated that to defense counsel so that I could alert him in case he decided to leave for Vienna before the end of the week and if we did agree in a conference the Tribunal would recall the witness Hoellenrainer. That is purely tentative.

THE PRESIDENT: You will notify the Tribunal at the opening of tomorrow's morning session whether you expect to call the witness Hoellenrainer?

MR. HARDY: Yes sir.

MR. STEINBAUER: Then I have nothing more to say at this time.

THE PRESIDENT: The Tribunal will be in recess until nine-thirty o'clock tomorrow morning.

THE MARSHAL: The Tribunal will be in recess until nine-thirty o'clock tomorrow morning.

(The Tribunal adjourned until 1 July 1947, at 0930 hours.)

Official transcript of the American
Military Tribunal in the matter of
the United States of America against
Karl Brandt, et al, defendants, sit-
ting at Nurnberg, Germany, on 1 July
1947, 0930-1700, Justice Beals, pre-
siding.

THE MARSHAL: Persons in the courtroom will please find their seats.

The Honorable, the Judges of Military Tribunal I. Military Tri-
bunal I is now in session. God save the United States of America and
this honorable Tribunal. There will be order in the court.

THE PRESIDENT: Mr. Marshal, will you ascertain if the defendants
are all present in court?

THE MARSHAL: May it please your Honor, all the defendants are pre-
sent in the court with the exception of the defendant Oberhauser, who
is absent due to illness.

THE PRESIDENT: The Clerk will note for the record the presence of
all the defendants in court with the exception of defendant Oberhauser,
who is hospitalized on account of illness pursuant to the orders of
the prison physician.

Mr. HARDY: In compliance with the request of the Tribunal that the
Prosecution state the position in regard to the calling of the witness
Karl Hoellenreiner. The Prosecution at this time requests that the wit-
ness Karl Hoellenreiner be recalled to the witness stand. It may be con-
venient to recall him at 12:30 this afternoon rather than this morning,
and then the defense can continue with their documentation in as much
the witness Hoellenreiner has not been alerted. It should be 1:30, Your
Honor, I am sorry.

Dr. STEINBAUER: Mr. President, it would be a good sign that
the Prosecution does not think it can dispense with this witness, but
nevertheless, I must strenuously object to a renewed examination of this
witness for legal reasons.

Karl Hoellenreiner was called by the Prosecution as a rebuttal wit-
ness and was examined. No one told or forced the Prosecution to say,

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"I have no further questions." By making this statement he indicated that the examination of the witness was completed, thereupon, I also said that I had no questions of the witness. If this witness is to be called to the stand again, after there has been an opportunity to interrogate him, and to tell him what Laubinger testified to just before him, then I believe that the value of this witness is slight, and it would be prejudicial to all the defense counsel, because then, of course, we would make application to re-examine our witnesses on weak points after having told them of faulty material of the trial. For these legal reasons I ask this application be rejected, but if counter to my expectations the Tribunal will grant this request, then I make my application on the basis of the mental condition of the witness Karl Hoellenreiner. When a regrettable incident occurred, and recess was called, a woman whom I had not known before came to me and said that she was Helen Hoellenreiner, the wife. There were very few defense counsel present --

Mr. HARDY: This is all hear say based on defense counsel's evidence that he is building up. I can not see what that has to do with the admissibility of the witness.

THE PRESIDENT: Counsel may proceed.

DR. STEINBAUER: She asked me to help her husband, saying that there was something wrong with his head. He had been in four experiments, and was suffering greatly. But not this circumstances alone, but a much more important one has occasions me to make this application, I have had great difficulty in trying to find experimental subjects that were scattered throughout Germany so far as this type is concerned, and I come across Karl Hoellenreiner. I went to see him, and I tried to find him at his home town. Then I sent a doctor to talk to him. He told this doctor he had been in four experiments, and that he was very much excited and disturbed. This doctor came to me and said we can not use this man as a witness,

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is a pathological liar. One must grant even a young doctor the ability to judge that this person is not quite normal. Therefore, I ask that before his examination that Karl Hoellenrainer be examined by a doctor appointed by the Tribunal, and that the Prosecution be given an opportunity to participate also in the examination by the doctor.

THE PRESIDENT: Any other defense counsel have anything to say on this subject?

DR. STEINEBAUER: May I continue, Mr. President, I am almost finished.

THE PRESIDENT: Yes, I thought counsel had concluded.

DR. STEINBAUER: In case Hoellenreiner is called to the witness stand I further make application immediately to send a messenger to the Nurnberg-Furth District Court in Erlangen and get a complete record of the file of 19 March of Karl Hoellenreiner who was born on 14 March 1914 in Furth. This could be done within two hours. The reason is that Karl Hoellenreiner is not unknown to my colleagues. They told me that to their knowledge Karl Hoellenreiner must have been convicted at least 12 times. He lied to you. He was asked whether he had been convicted and he said, "No." I don't have the German record here but I remember that. My colleagues have told me that Hoellenreiner has been convicted for theft, fraud, assault, etc. Therefore, I went to the penal registry and the officials said that as a private person he could not give me any information. I must, therefore, ask the Court to help me. I went to the Secretary General's Office yesterday and he also told me that without an order from the Court the Secretary's General's office could do nothing. It is without doubt necessary in judging this witness to determine whether he told the truth on this point or not and whether we are dealing here with a decent person or with a person who has been repeatedly convicted.

Mr. HARDY: Your Honor, Prosecution wishes to point out that I believe my words at the time of the interrogation here in the Tribunal in connection with the witness Hoellenreiner were due to the confusion and due to the conduct of the witness. I had no further questions at that time - that is in answer to the defense. Secondly, defense counsel have called witnesses back to the stand, and third, the testimony of Karl Hoellenreiner is deemed to be essential and necessary in this case. Be whatever his record may be that the prosecution has no knowledge of, he was experimented on in the sea water experiments and has knowledge of them and, in addition to that, he underwent at least one of them.

THE PRESIDENT: Counsel for the Prosecution having requested the right to call Karl Hoellenreiner again to the stand, the Court, having

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heard counsel for Prosecution and counsel for the defendant Beiglboeck in resistance of Prosecution's application, it is the order of the Tribunal that the witness Hoellerreiner may be recalled to the stand. Counsel for the defendant Beiglboeck may have an order of the Court which will assist him in procuring any record of the witness Hoellerreiner at Erlanger. If a request will be presented it will be immediately signed and accomplished so that counsel will be aided in every way by the Tribunal in gaining the information he desires. And, of course, counsel for defense may rebut the testimony of this witness. Under all circumstances the weight to be given to this witness called before the Tribunal is for the Tribunal to determine. Counsel will have the privilege of cross examining the witness. The witness may be recalled to the stand being under custody under order of the Tribunal, he will be under guard at 1:30 o'clock this afternoon.

Dr. GALLIK: (for the defendant Hoven) Mr. President, in the list of exhibits which are to be admitted which was given to you yesterday there is document exhibit 523, NO-2313. I intend to have a handwriting expert test the correctness of this document and offer an opinion. An expert is here in the building and I ask the decision of the Tribunal that the handwriting expert be allowed to examine the document in the General Secretary's office.

THE PRESIDENT: What is the number of that exhibit, counsel?

Dr. GALLIK: 523, Mr. President.

Mr. HARDY: Your Honor, I haven't heard the remarks of counsel. I had the switch on the wrong number and didn't get the translation. Repeat it please.

Dr. GALLIK: Exhibit 523, NO-2313 has a pencil notation on it which was discussed here in court. I want to have a handwriting expert examine it.

THE PRESIDENT: Counsel is correct. A handwriting expert produced by counsel for the defendant Hoven may examine the document in the of-

file of the Secretary General under supervision by an official of that agency. The clerk of this court will advise the Secretary General that the Tribunal has made this order for that examination.

Mr. HARDY: What reference is that - to the notation of the date which is on the document?

THE PRESIDENT: Yes.

Dr. GAWLIK: And then on the list, Mr. President, there are documents, Exhibit 526 and 527, NO-2366 and NO-2380, which are now to be finally admitted. Document 527, NO-2380 is a legal opinion by the SS judge, Dr. Morgan. I believe it is not permissible for legal opinions to be handed in as exhibits.

THE PRESIDENT: Counsel may present the objection when the exhibits are offered.

Dr. GAWLIK: Then I should like to call the attention of the Tribunal to the fact that the final decision about the admission of the affidavit of the defendant Haven, NO-429, Exhibit 281, has not been reached yet. The Tribunal postponed this decision until after the defendant Haven was examined. I should be grateful if I could have this decision so that I can consider it in writing my closing brief.

THE PRESIDENT: Is that exhibit contained in the list which is before the Tribunal?

Mr. HARDY: Subject to the president it was admitted in evidence - due to the fact it was not stricken by the Tribunal I assumed it was admitted.

THE PRESIDENT: The exhibit will be admitted in evidence.

Mr. HARDY: I believe, your Honor, defense counsel was to prepare a list as to how many remainder of supplemental documents would be presented and that list was to be ready here this morning at 9:30. I wonder if they have it ready?

THE PRESIDENT: Has defense counsel prepared the list suggested by the Tribunal yesterday afternoon as to the exhibits they propose to offer?

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* Any defense counsel now prepared to offer any further documents?

Mr. HARDY: Your Honor, I am not in a position to put any more prosecution evidence in at this time in as much as this document marked for identification, the index, which I checked yesterday afternoon there is a couple of errors in it - inasmuch they skipped some of the documents in cutting the stencils. I am having it recut and the books put together in a proper form. I didn't check it before they cut it but I won't have it ready until afternoon but I assure you I can take up the rest of the afternoon with the witness Hoellreiner and I think I will have my identification documents ready.

Dr. FLEMING: Mr. President, the list of when it might be expected that defense counsel could offer further material has not been completed because we have not been able to get in touch with some of the defense counsel. But, yesterday I talked with the Secretary General about the subject of translations and he told me we had to expect the translation branch to take about 2 weeks from the time documents are turned over to them before completed. Now, in the last discussion which the Court had with defense counsel the Tribunal said that all supplemental documents would be accepted which were handed in to the translation by the 3rd of July. I believe there will be considerable difficulty if the Translation actually takes two weeks for completion.

THE PRESIDENT: If counsel understood the Tribunal to answer that all documents handed in for translation by the 3 July would be accepted it is in error. I am informed by the Translation bureau that counsel Fleming for the defendant Dragowsky on last Friday, June 27 handed in I think 153 pages of a document to be translated. That was entirely too late to hand documents in for Translation. That means a task of 153 man hours to translate. I can't understand why counsel was so slow in handing them to the translation department. To hand them in on June 27 is too late to be presented for admission - was entirely too late and beyond any human possibility of having them ready.

Dr. FLEMING: Mr. President part of the documents came into my hands only very late but I would like to point out something further. The closing briefs of the defense counsel - I don't have all the figures together, but as far as I can see now will be 1800 to 2000 pages. The Tribunal said that closing briefs had to be ready by 7 July. If the translation takes 2 weeks we will not be able to get the closing briefs in time and Mr. Vartens told me yesterday that would take up this matter with the Tribunal once again.

Mr. HARDY: As I understood it, your Honor, the Tribunal was anxious to have the closing briefs into the translation department before 7 July and then the translation would have the closing briefs of defense counsel. Prosecution could read in German using some of our German speaking attorneys. And, if we had any answers to make we could do so but to file the briefs in the original language by 7 July and then it could be sent to translation and by the time the case is completed the Tribunal would have the briefs in very good form.

THE PRESIDENT: My recollection is that counsel for prosecution is correct. That the briefs were to be made by 7 July in the German language and copies of the briefs in German furnished to the Prosecution. The matter of briefs is an entirely different proposition from the matter of the documents which are evidence because as the Tribunal stated the Tribunal has insisted that the evidence be all before the Tribunal very promptly. I don't know - the Translation department has been working very hard and I understood they would have some of the defense documents available from day to day, today, yesterday and tomorrow. Can any German defense counsel give the Tribunal any information as to how many documents are in the hands of the translation department besides the 153 pages on behalf of the defendant Mrugowsky? Has any defense counsel present before the Tribunal this morning any untranslated documents in the hands of the translation department?

MR. HANBY: If your Honor please. If your Honor can see fit to recess for 15 minutes, the Prosecution will endeavor to get our documents sorted for identification and bring them here and present them at this time. In the meantime, defense counsel can have a conference and make out a list of just what documents they have at the translators and what documents they intend to produce.

THE PRESIDENT: The Tribunal would suggest, or indeed insist, that defense counsel furnish some data of that nature to the Tribunal. Could not the Prosecution call the witness Hollenreiner this morning?

MR. HANBY: We can call the witness Hollenreiner any time your Honor pleases.

MR. PRESIDENT: I suggest that you call the witness Hollenreiner now.

MR. HANBY: It will take several minutes for him to be brought up from the jail, your Honor.

THE PRESIDENT: Naturally.

MR. HANBY: Mr. President, this noon, after the recess, I shall hand in a list of the defense documents which are not yet translated.

MR. HANBY: It should also be called to the attention of the defense counsel that attorney Steinbauer should be called to the Courtroom for the examination of Hollenreiner.

THE PRESIDENT: The Tribunal will be in recess; the witness Hollenreiner may be called and the Tribunal advised as soon as he is ready. Counsel in the meantime will endeavor to procure this list of his documents.

MR. HANBY: Thank you, your Honor.

THE PRESIDENT: Dr. Flanagan?

DR. FLANAGAN: Mr. President, I have just heard that Dr. Steinbauer has probably gone to Perth in connection with this Hollenreiner matter so that he will not be present. I shall find out immediately.

THE PRESIDENT: I don't understand how Dr. Steinbauer could have done that because the Tribunal has signed no order that will enable him to procure the information which he desires. He has probably gone to his office

to prepare the order. If you can advise him that the witness will be called this morning; but he cannot have left, because if he is going without that order it would be useless.

The Tribunal will now be in recess until the Tribunal is advised that counsel is ready with the witness Hollenreimer.

(A recess was taken.)

THE CHAIRMAN: The Tribunal is again in session.

THE PROSECUTOR: The prosecution wishes to recall the witness Karl Koellnhauser to the witness stand, Your Honors.

THE PRESIDENT: The Marshal will summon the witness Koellnhauser.

KARL KOELLNHAUSER, a witness, took the stand and testified as follows:

JURY FOREMAN: You will raise your right hand and be sworn. I swear by God, the Almighty and Omnipotent that I will speak the pure truth and will withhold and add nothing.

(Witness repeated the oath.)

THE PRESIDENT: Counsel may proceed.

DIRECT EXAMINATION

Q A. WITNESS:

Q Witness, your name again is Karl Koellnhauser?

A Yes.

Q Witness, at the close of your testimony the other day, you were proceeding to tell the Tribunal about your activities after your arrival at the Dachau concentration camp?

A Yes.

Q Now, when did you arrive for the first time at the Dachau concentration camp?

A At times about the middle of July.

Q And then you stayed at the camp hospital for a period of one or two days?

A In Dachau?

A No, in Dachau, after your arrival?

A No, No, in Dachau.

Q And then you were examined physically and also X-rayed?

A Yes.

Q Then after you had been physically examined and X-rayed, what happened to you?

A Then, we came into a so-called surgical department of the hospital.

There were 40 of us men. Then a doctor came to us, a man from the Luftwaffe, and he examined us. He had to take our clothes off and line up. And he said, "Now, you will be given good food, as good as you have never had it, and then you will be hungry. You won't get anything to eat, and you will have to drink sea water." One of the prisoners whose name was Rudi Traubmann turned up and refused. He was in an experiment, a cold water experiment, and he didn't want to be in any more experiments. The doctor from the Luftwaffe said, "If you are not quiet, and want to rebel I will shoot you on the spot. The doctor from the Luftwaffe always had a pistol, and then we were all quiet. For about one week we got cookies, suetbush, and brown sugar. There were about 21 little cookies, and three or four little pieces of dextrose. Otherwise, we got nothing. The eight days...

Q Just a moment. Did you at any time volunteer for these experiments?

A No.

Q Were you asked whether or not you wished to volunteer for the experiments?

A No.

Q Were any of the other inmates asked if they would like to volunteer?

A No.

Q Wasn't the young Lottbach a volunteer, the youngest Lottbach?

A I knew only one Ernst Lottbach from Wuth, but I don't know whether he volunteered.

Q Was Ernst Lottbach in the experiments throughout that is, did he complete the experiments?

A No, he was only there a short time, two or three days maybe.

Q Then, the doctor from Luftwaffe got him out, and where he went I don't know.

Q Now, did the Professor ask anyone for their approval before they were subjected to the sea water experiments?

A No.

Q Did the professor or any of the other Luftwaffe physicians talk to the inmates and advise them as to the hazards of the experiment prior

Q. the commencement of the actual experiments?

A. No.

Q. Now, will you, in detail, tell the Tribunal just what food the experimental subjects received prior to the experiments, during the course of the experiments, and after the experiments; and in doing so, witness, kindly talk very slowly and distinctly so that the interpreters will be able to translate you accurately.

A. Yes. At first we got potatoes, milk, and then we got these cookies and dextrose and mawibach. That was about one week. Then we got nothing. Then the doctor from the Luftwaffe said, "Now, you have to drink sea water, and you will be hungry." That was about one or two weeks. This Rudi Taubman, as I already said, got excited and didn't want to participate, and the doctor from the Luftwaffe said, "If you get excited and untidy, I will shoot you," and then we were all quiet. Then we began to drink sea water. I drank the worst kind, that was yellowish. We drank it two or three times a day, and then in the evening, we had one liter of the yellow water. There was three kinds of water, white water, and yellow water; and I drank the yellow kind. And then after a few days, the people were cursing, they had foam at their mouth. The doctor from the Luftwaffe came with a cynical laugh and said, "Now it is time to make liver punctures." I knew one very well.

Q. Talk more slowly, witness. Thank you.

A. Yes. The first row on the left when you came in, the second bed, that was the first one. He started like a dog. He went crazy. He had foam at his mouth. The doctor from the Luftwaffe took him down on a stretcher with a white sheet over him, and then he stuck a needle about this long (indicating) into his right side, and there was a hypodermic needle on it, and it bled, and it was very painful. We were all quiet and excited. Then when that was over, the other prisoners had their turn. The people were crazy from thirst and hunger, but the doctor had no pity on us. He was cold like ice. He didn't take any interest in us. Then, the spy — I don't know his name anymore — he got a little bit of bread

ones, or drink some water, I don't remember just what he did, the doctor from the Luftwaffe got very angry and mad. He took the gypsy and tied him to the bed post and sealed his mouth.

Q. Now, do you mean that he put adhesive tape over this gypsy's mouth?

A. Yes.

Q. Go ahead, continue.

A. Then a gypsy, he was on the right, a big strong, husky fellow, he refused to drink the water. He asked the doctor from the Luftwaffe to let him go. He said he couldn't stand the water. He was sick with it.

The doctor from the Luftwaffe had no pity, and he said, "No, you have to drink it." The doctor from the Luftwaffe told one of his assistants to go and get a sound. Naturally, he didn't know what a sound was.

Then one of his assistants came with a red tube about that long (indicating) and thrust this tube in the gypsy's mouth first and then into his stomach.

Q. Just a moment. That tube was how long? How long would that be, a half a meter long?

A. About that long (indicating.)

Q. That will be about a half a meter?

A. Yes, about a half a meter. And then the doctor from the Luftwaffe, he took this red tube and put it in the gypsy's mouth and into his stomach. And then he poured the water down this tube. The gypsy knooled in front of him and he knocked him, but that doctor had no pity.

Q Witness, during the experiments were your temperature taken?

A Yes.

Q Who took your temperatures?

A There were two Frenchmen, one tall thin and one short blond one; and they took the temperatures and the doctor from the Luftwaffe took the temperatures, too.

Q When you say "the doctor from the Luftwaffe" you mean man you refer to as the professor. The professor and the doctor from the Luftwaffe are the same or are they two different people?

A Yes.

Q I see. Thank you. Now, who performed the liver punctures?

A The doctor from the Luftwaffe carried out the liver punctures himself. Some people were given liver punctures and at the same time a lumbar puncture. The doctor from the Luftwaffe did that himself. It was very painful. Something ran out — water or something — I don't know what it was.

Q Well, did you receive a liver puncture?

A Yes.

Q Did the professor tell you what reason he gave you that liver puncture — for what reason he gave you that liver puncture?

A The doctor from the Luftwaffe came to me and said, "Now, Hollenreiner, it's your turn." I was lying on the bed. I was very weak from this water and from not having anything to eat. He said, "Now, lie on your left side and take your clothes off your right side." I held on to the bedstead on top of me and the doctor from the Luftwaffe sat down next to me and pushed a long needle into me. It was very painful. I said, "Doctor, what are you doing?" The doctor said, "I have to make a liver puncture so that the salt comes out of your liver."

Q Now, witness, can you tell us whether or not the subjects used in the experiments were gypsies of purely German nationality or

were there some Polish gypsies, some Russian gypsies, Czechoslovakian gypsies, and so forth?

A Yes, there were about seven or eight Germans and the rest of them were all Poles and Czechs, Czech gypsies and Polish gypsies.

Q Were any of the experimental subjects ever taken out of the station room to the yard outside the experimental barracks?

A Yes, at the end when the experiments were all finished; and three people were carried out with white sheets over them on a stretcher. They were covered with sheets but I don't know whether they were dead; but we, my colleagues and I, talked about it. We never saw them again neither at work nor anywhere in the camp. We often talked about it and wondered where they were. We never saw them again. I assume that the people died.

Q Do you know where they were taken to?

A No, I don't know.

Q Well, during the course of the experiments were you weighed every day?

A Yes, we were weighed, too.

Q Was that every day or every other day?

A I don't remember exactly.

Q Well, now, after the completion of the experiments in early September what happened to you?

A When we had finished the experiments?

Q Yes.

A I told you that already. We were sent to the hospital and the doctor from the Luftwaffe came and said we were to take our clothes off and we lined up and were divided into three groups. The doctor from the Luftwaffe said, "Now you will be given good food. You have never had such good food." We were given potatoes, dextrose, cookies, milk --

Q Just a minute, witness. I am referring to the end of the

Q Just a minute, witness. I am referring to the end of the experiments, after the experiments were all completed. Could you tell us what date that was that your experiments were completed and you were transferred from the experimental station?

A The experiment lasted, maybe, four or five weeks altogether. I don't know the date.

Q Well, then, they were completed in early September. Is that correct? You arrived —

A Yes.

Q Now, after the experiments were completed did you then return to the camp proper or to the camp hospital?

A No, into the camp — about twenty-two — we couldn't walk. We had to help each other in walking. We were exhausted and I forgot to tell you one thing. Before we began the experiments and we had this good food for about one week the doctor took us out into the courtyard near the hospital. The doctor from the Luftwaffe came. He had a little bottle and he put a number on our chest. I had number "23." It burned and then we went back into the block. On every bed there was a number, the same number that we had on our chest and one man — but I don't remember who it was — one of the prisoners, said: "That is what they call the death number." Then I was scared and the prisoner said, "Yes, that is the death number so that the doctor of the Luftwaffe will know right away who is dead."

We didn't want to go on with the experiments but what choice did we have? We were just poor prisoners. We had to let them do with us what they wanted. We couldn't resist. I haven't got the power to relate everything as it.....

Q All right. Just a moment. Was your bed number "23"?

A Yes.

Q Then you were considered to be experimental subject No. 23?

A Yes.

Q Were you sick during the course of the experiments, witness?

A Yes.

Q Now, witness, after the completion of the experiments in early September were you then called in and weighed to determine your weight about two weeks later?

A No, not after two weeks.

Q Were you called in and weighed one week after you had completed the experiments? Do you remember?

A I don't remember. But we were weighed.

Q You were weighed every day during the experiments?

A Yes.

Q That I want to know is, were you weighed after the completion of the experiments? For instance, you were weighed every day during the experiments; then the experiments were completed; then you were not weighed again for a period of one or two weeks. Did you get weighed one or two weeks after the completion of the experiments?

A When the experiment was all finished? No.

Q Well, now after you left the experimental block and went to the camp how long before you were able to resume work?

A A few days. Then we were given a detail at a farm in Pulchochingen. We had to work hard and the food was better than in the camp but, you know, if you are a prisoner; what did the farmers give you? A little bread, some soup — but, in any case, it was better than in the camp; and then every evening we came back to our block and then we got the regular camp food.

Q Now, witness, were you ever subjected to any other medical experiments during the time that you were incarcerated in the concentration camps?

A No.

Q Did you ever suffer from any other diseases while you were in the concentration camps?

A Yes. Then the experiments were finished I got phlegmonal. I worked for the farmer for about a week and then I came back to the camp in Dachau and had phlegmonal. That was a few months I was in the hospital. It was the same block -- not the same block where we had the experiment. It was a different building. Then I had phlegmonal. I was there about a few months. Then I came out there. My leg was stiff because I have a big wound there.

Q All right, witness.

A And then the doctors didn't help me in the hospital and I had to leave the hospital again with my bent leg and I was examined by the SS doctors but they didn't care about my leg whether it was straight or bent. They weren't interested in me at all. They said I had to go to Augsburg and work for Messerschmidt.

Q All right, witness, Did you ever have malaria while you were in the concentration camp?

A No.

MR. HARRY: At this time, your Honor, the prosecution has no further questions to put to this witness. I might call attention of the Tribunal that this witness is Case No. 23, the man -- we examined his charts and graphs, and the ones where the stenographic notes appear on the back thereof have been admittedly offered by the defendant Boelboeck.

CROSS EXAMINATION

BY DR. STEINBAUER (Counsel for defendant Beiglboeck):

Q Witness, what was your father's name?

A My father, Rudolf Hoellenreiner.

Q What was your mother's maiden name?

A Johanna Wagner.

Q What were your grandparents' names?

A My father's parents I know only my grandmother's name, Johanna Hoellenreiner. On my mother's side, Amalia Wagner.

Q When you were examined the first time you said that you had never been convicted of any crime. Do you maintain this assertion?

A No, I have been convicted.

Q When why did you lie?

A I did not lie. I meant from the experiments.

Q The question was whether before you came to the Gestapo you had ever been convicted and punished by the police. Nothing had been said about experiments at that time. That's an excuse. Do you admit that you lied? It's much better for you.

A No, I did not lie.

Q Well, you have been convicted?

A Yes.

Q For theft?

A Yes.

Q For fraud?

A Yes.

Q For assault?

A Yes.

Q For blackmail?

A What do you mean by that?

Q Well, coercion.

A No.

Q For using a false name?

A No, I never used a false name.

Q You have to speak more slowly. We will come back to that.
Then you were prosecuted for desertion?

A Yes.

Q You refused to obey your draft order?

A Yes.

Q Isn't that why you were sent to the concentration camp?

A No, just because I am a gypsy. My brothers were in the war and they came back from Russia and came to Sachsenhausen and were murdered there, because there weren't supposed to be any more gypsies in the German army.

Q What kind of a triangle did you wear in the camp?

A A black one.

Q Your wife said that you were in malaria, phlegmon, typhoid and sea-water experiments?

A No, only this one experiment, no malaria.

Q Do you admit that you lied to the young doctor who talked to you?

A No, I didn't lie to the doctor. I just told him the truth. My wife and I weren't allowed to marry. My wife had a child and it was burned in Birkenau. My sister was burned and both her children.

Q Don't get excited. I asked you whether you told the young doctor that you were in four different experiments. All you have to say is yes or no.

A I told the doctor I drank salt water.

Q Lister, Mr. Mettbach, don't evade my question after the fashion of gypsies. Give me a clear answer as a witness under oath. Did you tell the doctor that you were in other experiments, yes or no?

A No. I just drank salt water.

MR. HARDY: Your Honor, the testimony of this doctor is not in evidence before this Tribunal. I don't understand what Dr. Steinhauer is referring to.

DR. STEINBAUER: In cross examination the prosecutor repeatedly read from testimony without offering it in evidence. I have the right to ask him —

THE PRESIDENT: Counsel is correct. He may proceed, but it would be better if counsel would ask the witness when and where he spoke to this doctor and the name of the doctor if he knows it.

Q (By Dr. Steinbauer) In Erlangen did you talk to a doctor from the hospital named Dr. Kloger?

A No.

THE PRESIDENT: Give the witness the date, Counsel. Tell him when that conversation took place or is supposed to have taken place.

Q (By Dr. Steinbauer) A few weeks ago.

A I was under medical treatment in Erlangen, but I don't know any Dr. Kloger.

Q Didn't a doctor come to your house? Didn't he come to see you?

A Yes, I don't know whether it was a doctor.

Q Well, but you talked to a young gentleman?

A Yes.

Q He said he was a doctor?

A No, he didn't say he was a doctor. ... or.

Q Didn't you tell this young man that you had been in four experiments?

A No, I just told him I drank salt water, and I had a liver puncture and I had phlegmons. And this malaria and typhoid happened in these camps.

Q Now, I am asking you for the last time, witness. I don't want to waste the Court's time. Did you tell this young man, Dr. Kloger, that you were in four experiments?

A No.

Q Then how can you explain the fact that your wife told me that?

A I don't know. We went through a great deal in the camps. The Jews and the gypsies were all exterminated. We had no value in the camp.

Q Didn't this young man leave a note with his address?

A Yes.

Q Well then, you knew his name?

A How should I know if the man comes and writes this note and says his name is Kloger, but I don't know that he is a doctor.

Q Now you know because you have that note.

A Yes, and he told me to come see him.

Q Didn't you tell this doctor that you wanted to go see Commissioner Auerbach in Munich because of your many sufferings?

A Yes, because we were oppressed here in the concentration camp offices. The Nazis took everything away. We were sent to the camp and the Nazis took all our property.

Q Well then, it's true that you want to ask for a large sum of money?

A No, I haven't taken a penny.

Q But you want 20,000 marks?

A No.

Q How much do you really want?

A I haven't got anything yet. A man named Isaner, from whom we made purchases before the war, his brother was exterminated in Auschwitz, and I haven't got a penny from the concentration camp office.

Q Witness, you don't understand me. I didn't ask you how much you got. I believe you are telling the truth that you haven't got anything. I just asked you how much you want to ask for?

A I haven't asked for anything yet.

Q How much do you intend to ask for? Didn't you say that you were going to ask for 20,000 marks?

A No.

Q Aren't you Uncle Karl?

A My name is Karl Hoolenrainer.

Q Didn't your relatives at Herzbruck call you Uncle Karl?

A No.

Q What is your religion?

A I am Catholic.

Q Are you married.

A Yes.

Q When and where were you married.

A I married in Erlangen.

Q When?

A In 1946.

Q What month?

A I don't remember what month.

Q Well, was it in the summer or winter?

A It was in the summer.

Q You said you were in Auschwitz?

A Yes.

Q Were you in the Birkenau extermination camp?

A Yes.

Q Weren't the gypsies in a big camp there?

A Yes.

Q Were there women and children there?

A Yes.

Q Did you have a wife there?

A Yes, my fiancée, Ida Schmidt. She was gassed. She was
burned. I never saw her again.

Q Didn't you beat this woman till she bled?

A No.

Q Did you ever beat her?

A No.

Q In what block were you there?

A Block 18.

Q Wasn't it block 20?

A Oh, 20, yes, 20.

Q You were in block 20. Do you remember who was the senior inmate there?

A There was a big Hungarian. He distributed the food.

Q Wasn't there a fellow named Laubinger?

A Yes, but he only distributed the food.

Q Yes, yes, I understand, and who was his deputy?

A In the block you mean?

Q Yes, Laubinger's deputy.

A A little man, an East Prussian.

Q Well, you are not so little, witness.

A He, yes.

Q Yes, I am talking about Laubinger's deputy in this room.

A I don't know.

Q Was it you?

A No, no.

Q Witness, these are very unimportant things, of little consequence, but it is better to tell the truth.

A Yes.

Q Now, just think. Weren't you Laubinger's deputy?

A No.

Q Didn't you help him carry the food?

A No.

Q Were you in any experiments there?

A No.

Q Now, let's go to the next camp, Buchenwald.

A Yes.

Q Were you in block 46 or 20 or where were you?

A We were in a tent camp.

Q Very good, in a big tent camp.

A Yes, there were several tents.

Q Were there a hundred gypsies or two hundred, how many?

A Oh, for God's sake, how shall I remember an exact number? There were a great many from Auschwitz. Some were put on a Wehrmacht transport. My brother was there. He was sent to Ravensbruck.

Q A little slower, witness. Then I am right if I say there were some thousands of gypsies?

A Yes.

Q Now, there was a roll call one day and volunteers were asked for for a work detail.

A No.

Q Do you remember that?

A No.

Q You yourself said that there was a roll call and people were wanted for Dachau?

A No, I don't know anything about it.

DR. STEINBAUER: The German record on Laubinger and Hoellentrainer is not yet available unfortunately.

MR. HARDY: Your Honor, for the benefit of defense counsel, this witness did not say that. The witness Laubinger did. I didn't ask this witness how they selected them at Buchenwald.

DR. STEINBAUER: Mr. President, I am sorry I only have the English.

Q (By Dr. Steinbauer) Here when you were a witness you testified, "I was in a tent camp in Buchenwald."

A Yes.

Q "And suddenly our numbers were called."

A Yes.

Q "Forty men were called up including me."

A Yes — no, we were just forty.

Q It says "including me." I didn't write the record. "We were told that we had to leave for Dachau; we had to work there."

A We were in Buchenwald in the tent camp and an SS man came and called our numbers. He called up my number too, and then we lined up in a group of our own. One gypsy who had already been in Dachau said it will be better in Dachau; we are going there to work, but we never volunteered for any experiments.

Q I didn't ask you about that, witness. I asked you whether it is true what I have just read to you; that you were called up against your will?

A We weren't asked at all. Forty of us were called together and were sent to Dachau.

Q Now, I have to tell you that your countryman — he is from Furth too — Matthesch, said that he talked to you; that he wanted to come because Dachau was nearer Furth than Buchenwald; is that true?

A That might be. I didn't mind going to Dachau because my brothers live in Munich.

Q Then you did go voluntarily?

A No, I did not.

Q How does it happen that Leubinger said something else. Leubinger said you were deceived, that is why you volunteered?

A No, I never volunteered. I certainly wouldn't ask for my own death and volunteer for....

Q Well, you went to Dachau?

A Yes.

Q Do you know the old Herzberg?

A No.

Q You don't remember the gypsy from Pressbourg?

A No.

Q He was the oldest gypsy?

A I don't remember.

Q You were with your comrades for weeks, and don't know their names?

A No.

Q It is possible that Mettbach did not know all the names then, isn't it?

A How should I know? I did not have time to ask everybody what his name is.

Q Did the professor, when the experiments were to begin explain the purpose that it was for rescuing people from shipwrecks, and it was a sea-water experiment?

A Yes, of course.

Q Did he explain that you would be very thirsty?

A Yes, he did first.

Q And that thirst was very unpleasant?

A Yes.

Q Do you remember a Rudi Taubmann?

A Yes.

Q You said today that you thought he was a revolutionary?

A No, I did not say that.

Q And that he resisted, and the professor had to hold him back with a pistol?

A No, no Rudi Taubmann was in the cold water experiments already, and the doctor from the Luftwaffe said, "You will have to drink sea-water, and you will be hungry, and you won't get anything to eat." Then Rudi Taubmann came up and told the doctor from the Luftwaffe he would not do it. The doctor from the Luftwaffe said, "If you refuse, if you mutiny, I will shoot you."

Q Witness, I must put to you the testimony of Leubinger. You consider Leubinger a decent, trustworthy person?

A Yes.

Q Leubinger said on page 10230 of the English record when he was asked whether Taubmann and a certain Bamberger in Dachau -- do you know them?

A Yes, I know Bamberger.

Q Whether they were volunteers, and he said, yes, they volunteered?

A No, I never volunteered.

Q No, no, no. Leubinger and Bamberger -- I mean Taubmann and Bamberger?

A I don't know.

Q You said nobody volunteered?

A No.

Q But now I am telling you that Leubinger said. He said that Taubmann and Bamberger, who were in Dachau before volunteered?

A No.

Q Then Leubinger was lying?

A I don't know.

Q You know that he said exactly the opposite to what you said?

A On that day if Taubmann had volunteered, he would not get so excited.

Q Then Leubinger was lying?

A I don't know.

Q Witness, I have read to you what the witness Laubinger testified to on this important point. Now I will ask you, is that true or not?

A I don't know what it is about.

MR. HARDY: Defense counsel, may we read the Laubinger testimony. I apparently missed it.

MR. STEINBAUER: Can you be kind enough to read it in English, Mr. Hardy. You do better than I.

MR. HARDY: (Reads transcript silently)

BY MR. STEINBAUER:

Q Well, then, Mr Laubinger —

A My name is not Laubinger.

Q Oh, Mr. Hoellenreiner. Was Laubinger lying on you?

A Laubinger said the same thing I did. He has to, too. He has to tell the truth about what the doctor did.

Q Yes, you both have to tell the truth, but now you are saying exactly the opposite. One of you must be lying.

A I don't tell lies. I tell the truth what the doctor said.

Q Now then Laubinger was lying?

A I don't know.

Q That is enough. You said that the young Mettbach from Furth, that he was telling the truth?

A Yes. I know him.

Q But you never saw him again, you said, is that right?

A Yes, when he left the experiments we did not see him any more.

Q That is enough. Now this Mettbach said that until the end of the experiments he was always in the Water Station I/1 during the daytime, and only went to the Department II during the night?

A I don't know.

Q You just said you never saw him again?

A Yes.

Q How big was the room where you were?

A Where these were carried out, where the experiments were carried out?

Q How big was that room? As big as this room?

A Not quite as big.

Q Then could you see the people?

A No, I did not see him any more.

Q Witness, wasn't there another Mettbech?

A I don't know.

Q About this Mettbech, didn't you see him in the room?

A No.

Q Then Mettbech is lying?

A We were so exhausted that we could not run around any more.

Q Then you were blind?

A No, I was not blind.

Q Then you became nearsighted?

A No. We were lying on beds. We did not have any strength to run around.

Q Witness, thirst dries out the mouth?

A Yes.

Q How can you explain that these people had froth?

A They had attacks and fits, and foamed at the mouth, they got raving madness fits.

Q I am just asking you how it can be that when the mouth is completely dry there can be froth?

A I don't know.

Q Then some became mad?

A Yes.

Q You Gypsies stick together, too, don't you?

A Yes, of course.

Q Then you can tell me who became mad?

A I don't remember.

Q You must know, if a friend of mine — I was a soldier twice, and if a friend of mine had gone mad then I would have known it.

A It was a tall man who had first rolled on the floor. He was the first one and he shd fits, and when he was there he was thrashing around with his hands and feet. He was a tall slim gypsy.

Q You said that you were weighed?

A Yes.

Q Isn't it possible that after you got out of the experiment, and got good food again and plenty of water, you were weighed again?

A No.

Q But then they had a chart showing where you were weighed every day?

A I don't know.

Q Were you weighed standing up or lying down?

A Standing up.

Q Were some of the people weighed lying down?

A I don't remember.

Q Was this scale such that people could be weighed lying down?

A I don't know.

Q Where — what did this scale look like?

A Well, it was a scale, a big scale. You had to stand on it. There was an indicator that showed the weight.

Q The man who had his mouth fastened shut, did he have a tube for his stomach, too?

A I don't remember.

Q You had a liver puncture?

A Yes.

Q Do you have a scar?

A I don't know.

Q Don't you ever look at yourself?

A Yes. You want to see it?

Q No. I am just asking you if you have a little circle, a little round scar there?

A I did not look at it as carefully as that.

Q Well, don't you think you have it? You do or you do not?

A I don't know. I was not interested in these camp matters any more. I would go crazy. I did not want to hear anything more about the camp. We suffered long enough.

Q Witness, do you think you are crazy or mentally defective?

A No.

Q Do you think there is something wrong with you mentally?

A No.

Q You say you are going crazy?

A Well, if I keep thinking of that camp.

MR. HARDY: I object to this line of questioning, your Honor.

BY MR. STEINBAUER:

Q Well, you had a liver puncture?

A Yes.

Q Do you know whether you have a scar, yes or no?

A I don't know.

Q What was the nationality of the people in the camp who were experimental subjects?

A Poles and Czechs.

Q How many Germans were there?

A Ten or eight, that spoke German.

Q Were there some Hungarians and Burgenlander?

A No, I don't know.

Q Wasn't there a fellow there called Papell?

A I don't know.

Q Were the Frenchmen there nice, or were they typical SS men?

A No, they were good to us.

Q Were they inmates?

A Yes.

Q They were nurses. Were these Frenchmen good people?

A Yes.

Q Where did they sleep?

A I don't know.

Q Listen, witness, they slept next to you. You must know that?

A No. The doctor from the Luftwaffe was with the guards, and they guarded us with a pistol.

Q Well, 3 people were carried out, you said.

A Yes.

Q Do you know their names?

A No.

Q Did anybody die during the experiment, as far as you know?

Could you say Meier died, for example?

A No.

Q Then, after the experiment was over, you worked on a farm?

A Yes.

Q That was in September - harvest?

A Yes.

Q Was that clean work or was that dirty work?

A That was dirty work.

Q One got dirty easily?

A Yes.

Q And where did you get after you left that farm? You had a phlegmone after this dirty work...

A Yes.

Q And then where did you go?

A Then I went to Augsburg.

Q To the Messerschmidt Works.

A Yes.

Q What were you there in the Messerschmidt Works?

A I was a laborer.

Q No, you were more. Just think.

A No, I was nothing. I was a common laborer. I was just a prisoner when I worked for Messerschmidt. My leg was still crooked when they sent me away from Dachau.

Q Weren't you the foreman there?

A No.

Q What are you living on now?

A I am a dealer in textiles and musical instruments.

Q Can you read and write?

A Yes.

Q Do you like to read the newspaper?

A No.

Q Do you have a radio?

A Yes.

Q At the beginning of this trial why didn't you come here and volunteer as a witness?

A I didn't hear about it.

Q But you have a radio?

A Yes.

Q Aren't you in the Care Station?

A Yes?

Q Didn't they talk about the experiments in Dachau?

A No. If I had known about it I would have come here immediately.

Q Didn't you ever beat anybody in Auschwitz?

A No. I can swear to that.

Q Now another question — the witness, Massion....

A I don't know him.

Q He was a soldier, a young fellow from the Rhineland.

A In Auschwitz?

Q No, no. We are talking about Professor Beiglboeck's station.

A Yes.

Q He was a witness; his name was Massion — a young Luftwaffe soldier.

A Yes.

Q Do you remember him?

A Did he wear glasses?

Q No, a student from the Rhineland.

A I don't know. I only knew 2 — the doctor from the Luftwaffe... there was an older man from the Luftwaffe and a younger man, with glasses. There was something wrong with his eyes.

Q Witness, a fellow named Pillwein, Fritz. Do you remember him? He was a nurse; he gave aid and food and weighed the people.

A Yes.

Q He was from Vienna?

A Yes, he was from Vienna.

Q Was he a nice fellow?

A Yes, he was a very good man.

Q Do you consider him trustworthy?

A Yes.

Q Then there was a Dr. Lesse there; he made the blood tests, etc.

A Yes.

Q Was he a nice fellow?

A From the Luftwaffe?

Q Yes, he was from the Luftwaffe.

A A big tall fellow?

Q Was he a nice fellow?

A Well, what do you mean — nice?

Q I am just asking you, do you consider him trustworthy?

A No.

Q How about Worlicek?

A I don't know him.

Q He was from Vienna too; he helped Pillwein.

A I don't remember that.

Q Did this Pillwein treat you well?

A Yes.

Q Now I have to tell you that these witnesses, so there is no mistake — the witness Worlicek said that the people were treated well outside of the experiment and then I should like the Prosecutor to read what the witness Leubinger said ... Well, that is not important...they all said that the Professor treated the experimental subjects well.

A No!

Q Well, are all these people lying then?

A How could the doctor from the Luftwaffe treat us well?

Q This doctor...

A What doctor?

Q Dr. Bieglboeck.

A No, he did not treat us well.

Q All right. Let us go on. Do you smoke a great deal?

A Yes, I used to smoke.

Q Did you smoke in the camp?

A Yes.

Q Was it easy to get cigarettes there?

A No.

Q In 1944 was it easy to get cigarettes anywhere in Germany outside of the camp?

A No.

Q Then cigarettes were very valuable?

A Yes.

Q Did you often sell or trade your food for cigarettes?

A No.

Q Did the professor give cigarettes to the patients?

A Yes.

Q How many?

A Two or three.

Q And the people who did the experiment well, got more?

A I don't know.

Q Well, think If Laubinger knew about it you must know about it.

A No I don't know.

Q Well, then you were in the experiment?

A Yes.

Q Your number was 23?

A Yes.

Q Can it be that from the 23rd to the 30th of August 1944 you were in the experiment? That is 9 day — 8½ days — is that right, when you were directly in the experiment?

A The water experiments and the liver puncture and so on lasted a week or two.

Q Don't evade me — when you yourself were drinking the water under supervision.

A I don't remember.

Q But think! It is important.

A I don't remember.

Q Why don't you remember? Do you want to make it more days or don't you want to tell the truth?

A No, I am telling the truth.

Q Well, I will show you a chart which shows that you were in the experiment 9 days at the most.

A No, it was longer.

Q Do you know what your weight was at the beginning?

A No.

Q At the end?

A No.

Q Were you ever photographed?

A Yes.

Q When you were in bed?

A On a stretcher in the courtyard we were photographed.

Q Was that at the beginning, the end, the middle, or when?

A At the end of the experiment.

Q I am afraid I don't have the photographs with me but we don't need them. At the end of the experiment you were photographed?

A I don't remember exactly.

Q Now I asked you whether you were photographed and you said it was at the end.

A Yes.

Q All right. Now I would like to tell me whether you are the one with the No. 23 here.

A Yes.

Q First look at the picture.

A Here I am. (Indicating on photograph)

Q That is right? That is you?

A Here, in these two pictures.

THE PRESIDENT: The witness may be seated. Sit down, witness.

BY MR. STEINBAUER:

Q Witness, these pictures were taken just before the end of the experiment?

A Yes.

Q And how did the experiment end in your case - do you remember?

A I don't remember what day it was.

Q I asked you how, and were you given water to drink, or milk?

A No.

Q Well, what happened?

A We had to drink salt water.

Q Yes, but when that stopped?

A Well, when the experiment was finished, then we got water.

Q Well, did the professor give you an injection?

A At the end he gave me a long bottle; it was water; he tied it up at the top and let it go into my arm.

Q That is what I wanted to know. Then after that did you feel better?

A No.

Q And it is not true if the professor says that it was almost a miracle how you revived and were able to walk around again?

A No. I did not jump nor did I run around when the experiment was finished. Prisoners had to help each other to walk.

Q Witness, weren't you photographed after you got this injection?

A I don't remember.

Q Well, think. Don't just say you don't know, but think it over. If you need time just think it over.

A No. I don't remember.

Q Now when these experiments were going on did you swindle?

A No, no, never.

Q You never drank any water?

A No.

Q We had a famous professor from America here and he found out exactly who drank water, and when.

A I never drank any water. We were so exhausted we could not even get up and we were under guard.

Q You say you never drank water.

A No.

Q Then it is not possible that on 3 days — on the 24th, the 25th and the 29th you certainly drank water and on the 28th probably?

A I did not drink any water during this experiment.

Q Didn't you throw away your urine?

A No, the doctor from the Luftwaffe examined the urine and he said, "Hollenrainer, . . ."

MR. HARRIS: Your Honor, the translation has not been coming through.

Q Witness, did you throw away your urine?

A No.

Q How much of this water did you drink — this yellow water?

A That was about the size of mug.

Q Could it have been half a liter?

A Yes.

Q And it had to be eliminated, too. If it is taken into the

body it has to be eliminated.

A Yes.

Q Well, how does it happen that on 2 days you had less urine than you drank, where otherwise you had exactly the same value? It is a very unimportant thing — it would be much nicer...make a much better impression, if you tell the truth. The other gypsies admitted that they swindled. That you should be the only one...

A I didn't do anything; I didn't drink any water; I didn't eat anything.

Q And you did not throw away any urine?

A No.

Q Well, when you were so weak after the experiment and came back to your barracks, which barrack did you come to?

A Block 23.

Q 23. Weren't there other gypsies there too? Room 4, I think?

A I don't remember. And it is not important.

Q Did you meet Laubinger there?

A Yes.

Q Mettbach?

A No. No Mettbach.

Q Witness, I will have you confronted with Mettbach who will say that he was with you.

A When the experiment was finished he was with me but he went away to Mauthausen.

Q Witness, I am asking you whether Mettbach was in the room in Block 23 with you?

A I don't remember.

Q You don't remember — that is something different. Do you consider it possible that he was there?

A I don't know.

Q Were there people who repeated the experiment?

A I don't know that either.

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Q If a gypsy was lying on the ground, wouldn't you have helped him, or wouldn't the Frenchmen have helped him?

A The doctor from the Luftwaffe took the patients down on a stretcher and made the liver puncture; some of them in their beds, too.

Q. I am asking you if a person became mad or was writhing on the ground wouldn't any of his comrades have helped him?

A. No.

Q. Why not?

A. Because they couldn't walk.

Q. Because you were weak?

A. Yes, we were weak.

Q. But the Frenchmen weren't so weak?

A. I don't know.

Q. They were next door?

A. The Frenchmen were there. They were in the other room.

Q. How far away was the other room?

A. In the same block on the right.

Q. There was just a door between them?

A. Yes.

Q. Were all the gypsies in the experiment at the same time or were there some that weren't in the experiment?

A. They were all in the experiment except Ernst Mettbach.

Q. You didn't understand me. I am sorry, witness. I am asking you whether all 44 of them drank sea water at the same time, or whether one group was thirsting and the others were going for a walk?

A. No, there were three kinds of water, white water and yellow water, and three groups, about 13 men in each group and 14 in one.

Q. That is what I wanted to know. The group not in the experiment - did they eat in the room or out of the room?

A. I don't know.

Q. Well, witness, you were there?

A. How should I know. When I was drinking seawater we didn't get anything to eat.

Q. What about the others?

A. We were all in the block. We couldn't walk.

Q. Did some people have to repeat the experiment?

A. Yes, the people who drank the water or ate some bread. Then the doctor from the Luftwaffe would get some sea water.

Q. Yes, we have already heard that. Do you know that some people had what they called an "escape point"?

A. I don't know.

Q. Were you there when the station was dissolved, and the apparatus was packed up? Did you help?

A. No.

Q. Do you know whether the professor tried to help the prisoners get some privilege, or to have people released from the Wehrmacht? Did you hear anything about that?

A. No.

Q. Didn't he promise that?

A. I don't know.

Q. You don't know anything -- do you suffer from a weak memory?

THE PRESIDENT: Counsel, will you please propound your questions more slowly. The question and answer are too fast for the interpreters.

Witness, will you speak more slowly and before answering counsel's questions wait a moment to let the interpreters translate counsel's questions.

THE WITNESS: Yes.

Q. Witness, you have already told us about the cigarettes. Do you know whether the professor did anything else for the experimental subjects, for example, that members of the Wehrmacht were to be released?

A. I don't know.

Q. Do you remember some criminals, that is, criminal police, that came and inquired?

A. No, I know nothing about that.

Q. Neither do I. Do you know that Lambinger came to the Quartermaster's office?

A. No, I didn't.

Q. He was in the same room with you, 22?

A. Yes, when the experiments were finished. I was on the farm for about a week and then had a phlegmons and was then taken to the hospital.

THE PRESIDENT: Counsel, I must insist that you wait until the witness has finished his answer and then propound your next question, so that it can be translated. And witness, you must delay your answer until the question propounded by counsel has been translated.

Q. Witness, do you know whether in the winter of 1944 or in the spring of 1945 there was a big famine in the camp?

A. I don't know anything about that.

Q. Did you ever hear anything about it?

A. No.

Q. And that many gypsies died then, you didn't hear that?

A. In Dachau?

Q. Yes, in Dachau.

A. No.

Q. Did you meet any of these 44 people?

A. No, there were not many. When the experiments were finished, many gypsies were sent to other concentration camps. I was in the hospital then.

Q. And you weren't in any malaria experiment?

A. No.

Q. Or typhoid experiment?

A. No, typhoid and malaria was in Auschwitz. A lot of gypsies had that in Auschwitz. Dead people were stacked like flour sacks and then taken away by trucks to the crematorium. Gypsies and Jews weren't worth anything in the camp.

DR. STEINBAUER: In the meantime, Mr. President, I have obtained the excerpt from the criminal record, which is only in German. I shall have it translated and offer it to the Tribunal.

THE PRESIDENT: From that record you might ask the witness concerning the statements on the record which you have.

MR. HARDY: May I see the record to check its authenticity? Will

the German interpreters kindly look at this for me to check its authenticity?

Q. Witness, I don't want to bother you with the question, but do you think it possible you had nine convictions?

A. I don't remember. I was a deserter and they betrayed me when I came to Auschwitz.

DR. STEINBAUER: I have no further questions, Your Honor.

THE PRESIDENT: Are there any other questions to this witness by defense counsel?

DR. GAWLIK: Gawlik for Hoven.

THE PRESIDENT: Counsel, on what matters do you desire to examine this witness?

DR. GAWLIK: About the general treatment of Jews in the concentration camp.

THE PRESIDENT: I don't see the relevancy of that matter concerning your client.

DR. GAWLIK: In order to prove the attitude of Dr. Hoven toward the Jews.

MR. HARDY: I think that is a matter of chronology, the attitude toward the Jews in this matter, taking into consideration the record of the IMT.

THE PRESIDENT: Are you going to ask the witness whether or not he knows Hoven?

DR. GAWLIK: No.

THE PRESIDENT: I see no materiality concerning the case of Dr. Hoven in the examination of this witness.

DR. GAWLIK: For my case I consider it material for my closing brief, but if the Tribunal does not think the questions necessary then I will dispense with them.

THE PRESIDENT: I see no pertinency of the questions to your defense.

DR. GAWLIK: I consider it pertinent to prove the good reputation

and character of the defendant Dr. Hoven and to prove that it is unlikely that he committed the offenses with which he is charged.

THE PRESIDENT: I suggest, counsel, if you contend that this witness knew Dr. Hoven, then it would be a different question, but you said you made no such contention.

DR. GAMLIK: No.

THE PRESIDENT: Then I see nothing to which he can testify that would be pertinent to Dr. Hoven's defense.

DR. GAMLIK: Very well.

THE PRESIDENT: Are there any other questions by defense counsel representing clients by whom this witness may be properly examined?

MR. HARDY: I have nothing further.

THE PRESIDENT: The witness Hoellenreiner is excused from the witness stand to be reconducted to his confinement in the prison.

The Secretary of the Tribunal - I see the Secretary is now absent.

MR. HARDY: The defense counsel have some documents. I think they might well introduce them now. I think I will be in a position at 1:30 to start with documents for identification.

DR. SAUTER: Mr. President, Dr. Sauter for defendants Bloem and Ruff.

I have heard that yesterday the Tribunal asked for a list of documents which are still to be offered by the defense. This morning I asked my colleagues how many documents they still have to offer, and I have drawn up a list which I now hand to the Tribunal so that the Tribunal will be informed. I shall hand you a list in a moment. On the right side I have always indicated whether these documents are in the hands of the Translation Branch, or whether they have not yet been handed in. You will be able to get a picture from this list. Unfortunately I have this list only in German, as there was not enough time to have it translated. I am sure, however, you will be able to understand the list anyhow.

THE PRESIDENT: I am surprised that defense counsel have documents which they have not yet handed to translation. I understood all such documents were in the hands of the translation department some time ago.

The Tribunal has received the list of the documents referred to by counsel.

DR. SAUTER: And then, Mr. President, may I make another remark? I have made a listing on a point, which the President brought up for discussion about the approximate number of pages of the closing briefs and the final pleas, insofar as they have not yet been translated. I have made this listing. Just a moment, perhaps I can give the court some copies of it.

MR. HARDY: Your Honor, from looking at this list concerning the supplement documents -- wait a minute, I can see we only have to deal with the supplemental documents in the case of Schroeder, Mrugowsky, Sievers and Brack, combined with all the others are merely miscellaneous documents and it seems to me Bracks, Schroeders', Sievers', Mrugowskys' attorney should be able to present their documents today. They certainly must have had their documents in more than a week ago, particularly the defendants Brack, Sievers, and Mrugowsky inasmuch as their cases were completed weeks ago.

DR. SAUTER: The delay with many documents can be explained by the fact that the Prosecution has offered new evidence against various defendants through the cases has long been completed. For example, against the defendant Dr. Blome, whose case has been finished for months, more documents were offered last week by the Prosecution. In this case, I have had no opportunity to call witnesses. I have made a statement on this new evidence and on an important point I have taken an affidavit of Dr. Blome today. I want this affidavit, which was taken, to be translated. It was not possible to do that earlier and it is possibly the same with other defense counsel. These documents, which are still missing, are documents dealing with these recent charges raised by the Prosecution.

MR. HARDY: Your Honor, you see the great difficulty has been here, the Prosecution, in an endeavor to be cooperative with the Tribunal and

defense counsel, has introduced rebuttal evidence out of order. We have done that to shorten the number of days and to expedite the closing of the trial. In so doing, the defense counsel picked up rebuttal evidence and tried to have new affidavit made.

I think a lawyer like Dr. Sauter who went through the whole I.M.T. and is far more familiar with the procedure of the Tribunal is trying to offer further evidence in rebuttal to the Prosecution's rebuttal evidence. We will never have the trial close if all of this evidence is permitted today.

THE PRESIDENT: There is merit in what the Prosecution has said. The Prosecution introduces evidence, the defense introduces evidence, the prosecution then introduces evidence in rebuttal and then rebuttal evidence is introduced by the defense. At the conclusion of the defense's rebuttal, the case is ended.

The prosecution in order to expedite the trial introduced some evidence out of order. Such evidence is not subject to defendant's rebuttal, it entitles them to bring in further evidence, but the case closes with the presentation of the defendant's rebuttal evidence. If the evidence here had been introduced in an orderly manner, it would be ended. If, of course, the prosecution in rebuttal, after introducing new evidence that is not in rebuttal in what the defense's contention is, the defense has an opportunity to introduce evidence.

Mr. HARDY: May I correct you, Your Honor, you erroneously said defendant's rebuttal when you mean prosecution rebuttal.

THE PRESIDENT: Yes, after receiving other evidence, which is not rebuttal or in explanation of evidence introduced by the defense that the new evidence will be excluded then there is no necessity and it might be excluded on objection. If there are no objections, it would go in. If it was admitted in evidence then the defense might answer. If the Prosecution offers the objection, it may open the door for the defendant to introduce other evidence to deny it. That would be a matter to be decided

by the Tribunal and the Court trying the case as circumstances might arise.

Dr. SAUTER: Mr. President, may I say something which is important for myself and which also goes more or less for all my colleagues. The Prosecution just said that Dr. Sauter had been in the I.M.T. and know the procedure very well. Now, I must say we learned something new in this field in many respects. For example, that the Prosecution on the last day of the case can bring new witnesses that is something new for us. I, as defense counsel, if it is a fair trial, demand that if such new evidence is brought in at the last moment, I am given an opportunity to answer it.

I should like to show you by a practical example what I mean. During the whole trial, which has been going on for eight months, the Prosecution did not say a single word against the defendant Dr. Blome in connection with typhus. Then it would have been their right to charge the defendant Dr. Blome in this connection, but for eight months they did not do so and now at the last moment, I believe it was last Friday, a document was submitted which suddenly charges the defendant Dr. Blome with typhus experiments. In his whole life he heard nothing about them and during the whole trial nothing was said about them.

In the interests of a fair trial, the Prosecution cannot say I am now in rebuttal and I think I have a right to demand that when such a new charge is raised, I have a right to answer it and if this document is given to me on Friday, I am not a magician, I cannot offer the affidavit of the Defendant Dr. Blome months ago. That is apparently true of many other cases of the other defense counsel. Mr. President, I ask the Tribunal to have understanding for this affidavit.

MR. HARDY: Your Honor, may I ask the defense counsel one question? Is the Defendant Blome charged in the indictment with typhus? No, is the answer. No further questions.

DR. SAUTER: Then I would like to ask the Prosecutor why, I think it

was last Friday, he submitted a document which connects the defendant Blome with typhus experiments?

Mr. HARDY: The defendant Blome is not charged in the indictment with typhus, the evidence will show that the Prosecution definitely entertains no charge against Defendant Blome with typhus. That is correct. It seems to me that defense counsel can read the record and see which evidence they can well ignore. I think in a question like this document, they would do well to ignore it. The affidavit shows the Tribunal the entire procedure, they held conferences, how typhus experiments were started.

It seems at this last date the document at least did show Dr. Blome was connected with typhus.

THE PRESIDENT: You introduced no official evidence to show that the defendant Blome was charged with typhus experiments?

Mr. HARDY: I did not introduce it, Your Honor, and this is the first time the Document was introduced.

THE PRESIDENT: The matter of evidence is covered by Ordinance No. 7, which allows the Tribunal in its discretion to allow rebuttal on both sides. The situation is not altogether fortunate, but I would like to say defendants in preparing these documents they were informed they must get in their documents to the Translation center. I don't know how many documents are coming out. The translation authorities said the documents would be turned out every day beginning with yesterday, today and tomorrow. I don't know if the defense received any documents or not.

I notice defendant Mrugowsky has put in 19 documents, put them in on the 27th day of June — just a few days since. Have any defense counsel further documents to introduce? We have some here, I notice.

Dr. SAUTER: Mr. President, may I add something? In addition to the one list, which I gave you about the documents, which are not ready yet, I have a second list which I also handed to you, showing approximately the number of pages of the closing briefs and final pleas, insofar as they

are not yet translated. On the left side, I have the name of the defendant and defense counsel; in the middle, I have a column showing whether those closing briefs and pleas have been handed in for translation yet or not, or whether this translation is finished. On the right side, I have the number of pages still to be translated. The majority of these closing briefs and pleas are in the hands of the translating branch. I am giving you this list so that the President will have a picture of how much material still has to be translated.

THE PRESIDENT: I understand that the number of pages shown in the right hand column simply indicates the number of pages not yet translated; is that correct?

Dr. SALTER: Yes, the number of pages not yet translated. On those that are translated, I simply made a line and dash on the right and that is indicated in the center column. The figures on the right are only those which are still to be translated, which have not yet come back from the Translation Branch. The President can see how much work there has to be done by the Translation Branch and it will be easier for the President to reach his dispositions.

THE PRESIDENT: Yes, I understand. We appreciate this list. Of course, the documents which must be introduced before the close of the evidence are the matters of first importance. The briefs will be done as soon as the documents which are to be referred in evidence are ready. I shall endeavor during the noon recess to ascertain how the translation department is proceeding.

The Secretary will file for the record the certificate concerning defendant Oberhauser who is ill.

The Tribunal will be in recess until 1:30 o'clock.

(A recess was taken until 1330 hours.)

AFTERNOON SESSION

(The hearing reconvened at 1330 hours, 1 July 1947)

THE PRESIDENT: The Tribunal is again in session.

MR. PERLIN: (counsel for the defendants Gohardt and Fischer): Mr. President, on last Saturday in connection with Document Book 18, the Prosecution offered an affidavit of the camp commandant Juron. This is Exhibit 350, Exhibit 350. I objected to the admission of this document. The court overruled my objection but said that to refute these statements I could submit an affidavit from the Defendant Karl Gohardt. I have obtained this affidavit in the German, and this morning I sent four copies of it to the Translation Branch. I should like to offer this as Gohardt Exhibit 55. It is Document 47.

THE PRESIDENT: This matter did not seem to be assigned to this exhibit, is it?

MR. PERLIN: This is Gohardt 45. I have no translation of this document yet, Mr. President, but I am in a position to give the Tribunal four copies in German so that the document number can be entered.

THE PRESIDENT: Counsel for the Prosecution, are you at all familiar with the document?

MR. PERLIN: Yes, I am not familiar with the document, your Honor; however, it is a document of the Defendant Gohardt. It is sworn to, and as a matter of convenience and expediency, I will not object to it if an English copy is filed with us in due course.

THE PRESIDENT: How long is the affidavit, Counsel?

MR. PERLIN: Nine pages, but it is written widely spaced.

THE PRESIDENT: Of course, Your Honor, this is an answer to document which I consider to be rebuttal evidence. The Defendant has taken the stand, and the testimony of the defense he has given his opinion as to the status of the camp, and the affidavit of Fritz Juron gives the opinion of the camp commandant at that time as to the status of the inmates in the camp and other particulars which were testified to by the Defendant.



Report. The affidavit of Fritz Kuhren doesn't bring any new evidence, and this is an answer to the affidavit. In my opinion in the theory of the law it is incorrect to introduce this and it would be erroneously received, inasmuch as the affidavit of Fritz Kuhren is in the nature of a rebuttal.

THE PRESIDENT: I think it would be better to wait until the last of the documents are offered so that we might probably have the English translation. We will pass the documents at this time and consider it at some later date.

I should state for the benefit of counsel for both parties that this noon I spoke with the head of the Translation Department. I talked with Mr. Saturday, W. F. Hedges, and he told me that every document which he had last Saturday, would be available for this Tribunal tomorrow morning, Sunday morning. He informs me today that his promise will be carried out, that every document that he had at the time I spoke to him last Saturday will be ready tomorrow morning. He also informed me that he had received several documents for translation yesterday, some on behalf of the Defendant Handloser, some on behalf of the Defendant Reed, and some documents from another defendant whose name he had forgotten. It seems to me that as far as Defendants Handloser and Reed and concerned there is little excuse for the late date these documents were turned into the Translation. As to the other defendants, I am not advised, but we will see what we have tomorrow morning.

Counsel for the Prosecution is ready to proceed with his documents?

MR. HEDGES: Your Honor, I should now like to proceed with the documents which the Prosecution have introduced during the course of the defense and which documents have been marked for identification only. I will distribute a limited number of copies of indexes and documents of those particular documents which were marked for identification, in English and in German; and during the presentation of these documents for formal admission, the Prosecution would appreciate any suggestions from the Tribunal in connection with the introduction thereof. I have four copies of the complete

documents with indexes for the Tribunal. The two that I presented to Judge Keating and Justice Seale yesterday were a little out of order in one or two instances, but these, I am assured, are in better order; and I think that if you will refer to these you will have a better index and all the documents complete. At the same time, I have one copy for the interpreters in English and one for the court reporters. We have four remaining copies in German for the defense counsel. Bearing in mind, of course, Your Honor, that all parties have previously received copies of these documents. These are merely for convenience.

THE PRESIDENT: The Secretary will hand these documents to the Tribunal.

MR. HENRY: If Your Honor please, for convenience, if you will take the last document, on the bottom of all, that should be the first one which I introduce which is Exhibit No. 442. You see the asterisk on page 1 which refers to the last page. This is Exhibit 442, which is Document 100-892. Put that on the top; and then I think we can continue along in order until we hit another snag. And as I go through these, Your Honor.....

THE PRESIDENT: Just a moment, Counsel.

MR. HENRY: Yes, sir.

THE PRESIDENT: The last document....

MR. HENRY: The last document is No. 100-892.

THE PRESIDENT: That doesn't seem to be here, Counsel.

MR. HENRY: Perhaps it's been put on top.

THE PRESIDENT: Yes, that is on top. I thought you referred to the last document in the book. Very well.

MR. HENRY: The first document is Document 100-892, which is Exhibit No. 442, which I offer at this time formally for admission into evidence.

THE PRESIDENT: Can you state, Counsel, in connection with each document the name of the defendant in connection with whose evidence these documents were identified?

MR. HENRY: That would be almost an impossibility.

THE REQUEST: Very well, I just asked for the information.

Q. A: However, this is a authentic document.

I think I can do that, Your Honor. Miss Johnson has prepared a list for me.

This document NO-892, which is offered as Prosecution Exhibit No. 442, was introduced during the course of the cross examination of Karl Brandt and is found on page 2540 of the official transcript.

THE PRESIDENT: What page, Counsel?

MR. HARDY: The page is contained in the index, Your Honor. The index has the page of the official transcript.

THE PRESIDENT: That is in the right-hand column?

MR. HARDY: That is right, Your Honor.

THE PRESIDENT: All right.

MR. HARDY: Will I assume, Your Honor, that these documents are accepted into evidence and continue right along unless there are objections to the contrary?

JUDGE SEBRING: Mr. Hardy.

MR. HARDY: Yes, Your Honor.

JUDGE SEBRING: I notice in several of these there is a reference; well, in 890, for example, "on the basis of a letter directed to Professor Dr. Brandt"; and, if you can, when you come to the documents referring to Dr. Brandt, if it is convenient for you to do so, will you indicate whether that is Karl Brandt or Rudolf Brandt?

MR. HARDY: Yes, Your Honor.

JUDGE SEBRING: And also it appears that some of these copies do not have signatures, and it may be that the originals do. If they do, will you please give us the documents — for example, the last exhibit, 442 — I don't know whether that had a signature or not.

MR. HARDY: The last exhibit does not have a signature, Your Honor. It is a certified copy by the — I think it is the prosecutor or the court officer in Frankfurt from whom we received the copy. It is purported to be a copy of the original.

JUDGE SEBRING: The letter itself evidently has a signature, because the word "signature" is written there, but the name is not trans-

cribed.

MR. HARDY: That is right, Your Honor. The name wasn't reproduced.

THE PRESIDENT: These documents, as they are called to the attention of the Tribunal and offered, will be considered as received in evidence unless there is an objection, in which event, of course, the objection will be heard and decided.

MR. HARDY: There is one other point I want to clarify, Your Honors. When I refer to these documents which are submitted during the cross-examination of a particular defendant I do not limit the document and the contents thereof to that particular defendant's case. It may well fit into other defendants' cases.

THE PRESIDENT: That will be understood.

MR. HARDY: The second is Document NO-890, which is offered as prosecution Exhibit No. 443. This was introduced during the cross-examination of the Defendant Karl Brandt and is found on page 2500 of the transcript. The original letter, Your Honors, contains a signature which I am unable to decipher and is illegible, unless it could be deciphered by other German handwriting experts.

The next is Document NO-1758, which is offered as Prosecution exhibit No. 444. This is found on page 2545 of the official transcript. These are excerpts from General Halder's diary. The diary was taken in shorthand. The original shorthand notes were transcribed into German and duly certified, Your Honor.

THE PRESIDENT: What is the number of that document, Counsel?

MR. HARDY: That will be Exhibit 444. The document number is NO-1758.

The next document is Document NO-119, which is offered as Prosecution Exhibit 445, found on page 2638 of the transcript, and is an order of the Fuehrer regarding the release of doctors from their professional discretion. This is an original letter, Your Honor, which is on the official stationery, of the National sozialistische Deutsche

Arbeiterpapel and was found by the Prosecution in the document center in Vienna, and is duly certified. This is also offered in connection with the case of Karl Brandt.

The next document, Your Honor, is NO-154, which is offered as Prosecution Exhibit 446, which is found also on page 2638 of the official transcript, and this is a report on some experiments with the decontamination of water. The original exhibit is a photostatic copy which is signed. This was found by myself personally in the files of the Reich Research Council in Frankfurt.

The next document is Document NO-1419, which is offered as Prosecution Exhibit 447, which is found on page 2641 of the official transcript and is a letter from Rudolf Brandt to Karl Wolff regarding the food experiments in concentration camps. Pardon me, Your Honor -- correction -- it is a letter from Karl Brandt to Wolff, and it bears the original signature of the defendant, Karl Brandt.

The next document is NO-1382, which is offered as Prosecution Exhibit 448 and is found on page 2644 of the official transcript, during the course of the cross examination of the defendant Karl Brandt. These are two telegrams, Your Honor.

The next document is NO-1620, which is offered as Prosecution Exhibit 449 and found during the cross examination of Karl Brandt, on page 2646 of the official transcript. This is a memorandum from Grawitz to Himmler on proposed medical experiments and then the reply of Rudolf Brandt for Himmler. The original exhibits contain the original signature of Reichsarzt SS Grawitz and also the initials of the Defendant Rudolf Brandt.

The next is 1490, NO-1490, which is offered as Prosecution Exhibit 450, which is found on page 3024 of the official transcript. These are two letters regarding the Handloser appointment to the Reich Research Council, which were introduced during the cross-examination of the Defendant Handloser. These are in the original, Your Honor, with an envelope attached thereto. One has the typewritten signature

of Fromm, and the other has a signature which I am unable to make out, and you recall that there was a note on the top regarding Professor Rostock.

The next is a statement by the Defendant Handloser, which is NO-732, which is offered as Prosecution Exhibit 451. It is found on page 3060 of the official transcript. This was likewise offered during the course of the cross examination of the Defendant Handloser.

The next is Document NO-1323, which is offered as Prosecution Exhibit No. 452, which is found on page 3082 of the official transcript and bears the original signature of the Defendant Handloser. It has an attachment thereto and it concerns spotted fever or typhus vaccines.

The next —

JUDGE SEBRING: Wait just a minute, please. No. 732 was 451?

MR. HARDY: Yes, Your Honor.

JUDGE SEBRING: No. 1323 was 452?

MR. HARDY: Yes, Your Honor.

JUDGE SEBRING: And No. 1321 is 453?

MR. HARDY: That is what it will be, Your Honor. I am getting to that now. Do Your Honors have copies of the index before you?

JUDGE SEBRING: Yes.

MR. HARDY: Next is Document NO-1321, which is offered as Prosecution Exhibit No. 453, which is found on page 3084 of the official transcript and was introduced during the cross examination of the Defendant Handloser.

The next document, Your Honors, is NO-1315, which is offered as Prosecution Exhibit No. 454. It is found on page 3086 of the official transcript and was offered during the cross examination of the Defendant Handloser. It contains the original signature of one Dr. Bisber.

The next is Document NO-1318, which is offered as Prosecution Exhibit No. 455. It is found on page 3090 of the official transcript

and was offered during the cross examination of the Defendant Handloser. This contains an original signature which is reported to be illegible in the translation and I, unfortunately, am unable to decipher it.

THE PRESIDENT: That, Counsel, is Document 1315?

MR. HARDY: 1315, Your Honor. It is offered as Exhibit 455, as indicated on the index.

The next document, Your Honor, is Document NO-1852, which is offered as Prosecution Exhibit 456, which is found on page 3406 of the official transcript and was introduced during the course of the cross-examination of the Defendant Rostock. At that time it was objected to by Dr. Servatius. The original copies of the documents were sent here from Metzweiler and were exhibited to Defense Counsel, and he informed me orally that he withdrew objection after having the opportunity to peruse the original documents.

The next document, Your Honor, is NO-692, which is offered as Prosecution Exhibit No. 457, found on page 3408 of the official transcript and was introduced during the cross examination of the Defendant Rostock. This is a list of research assignments from the office of the Chief of Science and Research. The Defendant Brandt signed, the original signature by the Defendant Rostock.

The next document, Your Honor, is Document NO-934, which is offered as Prosecution Exhibit No. 458, and which is found on page 3655 of the official transcript and is a list of further assignments in research in connection with the office of the Reich Research Council and the Chief of the Medical Services. That is the office of Dr. Brandt, Karl Brandt.

The next document, Your Honor, is Document NO-232, which is offered as Prosecution Exhibit No. 459. It is found on page 4237 of the official transcript and is a letter from Gebhardt to Brandt regarding experiments at Dachau.

JUDGE SEERING: Which Brandt?

MR. HARDY: This should be Rudolf Brandt, Obersturmbannfuhrer

Dr. Brandt. That is to be found during the cross examination of the Defendant Gebhardt.

The next document, Your Honor, is NO-919 which is offered as Prosecution Exhibit 460, found on page 4244 of the official transcript, was offered during the cross examination of the Defendant Gebhardt. This is a Himmler order regarding experimentation on concentration camp inmates.

THE PRESIDENT: One moment, counsel. I don't seem to have that in order.

MR. HARDY: That's 919, Your Honor.

THE PRESIDENT: I have it.

MR. HARDY: Now, if you will turn to the second page of the index Your Honor, you will come to Document NO-190, which is offered as Prosecution Exhibit No. 461, which is found on page 4714 of the official transcript and was introduced during the course of the examination of the Defendant Blome.

The next document, Your Honor-----

THE PRESIDENT: Just a minute Counsel.

MR. HARDY: Yes, Your Honor.

THE PRESIDENT: Counsel on the top of the second page of this index I find Document 1185.

MR. HARDY: The second page?

THE PRESIDENT: No, Page 2 is omitted from my index. That's the top of Page 3, but I have no Page 2.

MR. HARDY: I will send you up a Page 2 Your Honor.

THE PRESIDENT: I have one. I have another Page 2 here.

MR. HARDY: On Page 2, Your Honor, the top document is NO-190. It is offered as Prosecution Exhibit 461 and is found in the transcript on pages 4714 and was introduced during the examination of the Defendant Blome. Are you in order now, Your Honor?

THE PRESIDENT: Just a moment -- yes.

MR. HARDY: The next document is No-1424, which is offered as Prosecution Exhibit No. 462, found on page 4773 of the official transcript and was offered during the examination of the Defendant Blome. The next document is NO-1057, which is Prosecution Exhibit No. 463, found on

Page 4783 of the transcript, and was offered during the examination of the Defendant Blome. This bears the original initial of the Defendant Rudolf Brandt.

The next document, Your Honor, is NO-1368, which is Prosecution Exhibit 464, found on page 4807 of the official transcript and was introduced during the examination of the Defendant Blome. It bears the original initials of the Defendant Rudolf Brandt. The next document, Your Honor, is Document NO-435, which is offered as Prosecution Exhibit 465. It is found on page 4983 of the transcript and was offered during the examination of the Defendant Rudolf Brandt. It has thereon various signatures, and letters from Himmler are attached thereto, and we will find endorsements which contain the original initials of the Defendant Rudolf Brandt. The Tribunal will recall that he properly identified them during the course of his examination.

The next document, Your Honor, is NO-1198, which is offered as Prosecution Exhibit 466, found on page 5390 of the official transcript and is a letter from Grawitz to Mrugowsky which was introduced during the examination of the Defendant Mrugowsky. It is signed in a typewritten signature by Grawitz and then "by order of Grawitz," and the original signature of one, "Nicolai" appears on the original document.

The next document, Your Honor, is NO-1303, which is Prosecution Exhibit 467, found on page 5400 of the official transcript and is a letter from Mrugowsky to the Reichsarzt SS, bearing the initials of the Defendant Mrugowsky.

The next document, Your Honor, is NI-054, which is an affidavit of a witness named Rudolf Hoess, and it is Prosecution Exhibit 468, found on page 5407 of the transcript

and was introduced during the cross examination of the Defendant Mrugowsky. This also bears a jurat thereon to the signature of Rudolf Hoess, of one Alfred E. Buch, who is duly authorized by the chief of counsel to administer oaths. Your Honors will notice that in addition to this affidavit, which I may not have called to your attention during the course of the cross examination of the Defendant Mrugowsky, is a rather elaborate chart of the concentration camps in Germany. The Prosecution did not have this reproduced for the convenience of the Tribunal. However, the Tribunal will note that it is attached to the original, and if they desire photostatic copies thereof, they may well have the Secretary General reproduce them for their use. Now, I just noticed this myself when I looked at the original exhibit.

THE PRESIDENT: The Tribunal will be glad to have those photostatic copies.

MR. HARDY: It is nothing of evidential value, I think, Your Honor, other than the location of particular concentration camps.

DR. FLEMING: (For Mrugowsky) Mr. President, I object to the submission of this chart. It was not included when the document was offered originally. I do not know this chart and therefore I must object, since I do not know what it shows.

MR. HARDY: I am not offering it in evidence, Your Honor, I was merely calling it to your attention. It is immaterial to me whether it is accepted into evidence or not. I thought for the convenience of the Tribunal if they would like to see a detailed map concerning the location of concentration camps, it is there for your perusal.

THE PRESIDENT: It is not received in evidence, not

having been offered in evidence.

MR. HARDY: The next is Document NO-1305, Your Honor, which is offered as Prosecution Exhibit 469, which is found on page 5426 of the official transcript and was offered during the course of the cross examination of the Defendant Mrugowsky.

DR. GAWLICK: Mr. President, I should like to have the Prosecution explain whether this exhibit is to be used only against the Defendant Mrugowsky or also against the Defendant Dr. Hoven, who is mentioned in it.

MR. HARDY: I think I have amply explained that in our briefs, Your Honor. I am not in a position today to elaborate on each document. I have here several documents that number up into the fifties, and it would place a burden upon me, as one prosecutor, to enable each one of these defense counsel -- I am not in a position to write a brief for each one of them at this time.

THE PRESIDENT: When defendants' counsel receive the briefs of the Prosecution, the defendants' counsel will be fully advised as to which documents are relied upon as evidence against which particular defendant or defendants.

MR. HARDY: I might state that he may rest assured that this document will be used against him if it has any connection with the typhus experiments at Buchenwald, and he may guide himself accordingly in his brief.

The next Document is NO-1188, which is offered as Prosecution Exhibit No. 470, which is found on page 5437 of the official transcript and was offered during the cross examination of the Defendant Mrugowsky. This has the original signature of Lolling. The next is Document NO-1189, which is offered as Prosecution Exhibit 471 and is found in the original transcript on page 5440 and was offered during the

cross examination of the Defendant Mrugowsky, and you will recall at that time that the document was objected to by Defense Counsel and that the defendant himself indicated that he was fully aware of the contents of the document, and at that time the objection was withdrawn.

THE PRESIDENT: Just delay a moment, Counsel, before offering the next document.

MR. HARDY: Yes, Your Honor. I want to call to the Tribunal's attention that this last document also bears thereon the original signature of Dr. Ding. It's in the left-hand corner, second page of the original document.

The next document, Your Honor, is Document No-1192, which is introduced as Prosecution Exhibit 472 and is found on page 5451 of the official transcript and bears the signature of the Defendant Mrugowsky. If I recall correctly, he properly identified that as his signature during cross examination. The next is Document NO-2734, which is offered as Prosecution Exhibit 473, which is found on page 5622 of the official transcript. It is a letter from Grawitz to Himmler regarding clinical surgical experimentation by Gebhardt, with enclosures. The original has the signature of Grawitz thereon; it also has the original signature of the Defendant Gebhardt and a note thereon, and in addition to that, on the last page of the document, we note the original signature of the Defendant Poppendick, which was properly identified by the Defendant in the course of his examination. This was introduced during the cross examination of the Defendant Poppendick.

DR. SEIDL: (for Gebhardt) Mr. President, I object to the admission of this document at the present time. Document NO-2734 was not shown to the Defendant Karl Gebhardt in cross examination but to the Defendant Poppendick. It was

It was obviously shown to the Defendant Poppendick only in order to determine the correctness of his signature at the end of the document. Only one photostatic copy was shown to the Defendant Dr. Poppendick on the witness stand by the Prosecution. Defendant Gebhardt nor I myself had any knowledge of the contents of this document. Today I see this document for the first time. Consequently I have had no opportunity to present any evidence against the contents of this document. In view of the fact that the Prosecution has not as yet given the Defense any copies of this Document, I make application that this document be admitted only for identification but not as an exhibit.

MR. HARDY: May it please Your Honors, it amazed me no end that Dr. Seidl hasn't seen this before, because it was a topic of conversation here for several weeks that we had a document, an original report of the experiments of Gebhardt, and it seems to me that I recall even chatting with Defense Counsel about it, but I may be recalling incorrectly. However, this document is a rebuttal document in the same manner as all the rest. The Defendant Gebhardt took this stand and said that Krugowsky had nothing to do with these experiments. Right in this document he thanks or wishes to thank Krugowsky, Blumenreuther, and so forth for their assistance. This document is in the nature of a rebuttal document. It is a German document, and it couldn't be any more original than it is. It has been in the hands of Defense Counsel, to my knowledge, Defense Counsel for Poppendick had it for several days and had the opportunity to observe it, and whether or not the Defendant Gebhardt had an opportunity to be heard on the document is immaterial. It is a rebuttal document. It rebuts the testimony of the Defendant Gebhardt directly. I wish to pass it up to Your Honors, for your perusal.

MR. HARRY: (continued) As a matter of fact, Your Honor, it would have been introduced during the cross examination of the Defendant Gebhardt had we received it. We found it coincidentally on the morning of the cross examination of Poppendick and it had his signature thereon. That's why I used it immediately. At that time it had not been processed but since then it has been processed, and I have been informed that copies have been delivered to defense counsel immediately upon the completion of the processing, which was during the course of the case of Poppendick. I am not certain, but as I remember this document was introduced on 9 April, and this is now 1 July.

THE PRESIDENT: The final record on page 5622 as shown on this index would show what happened. The document will be received in evidence.

Counsel for the Defendant Gebhardt, of course, may make any argument in his brief against the application of this document to his client that he deems to be well founded.

MR. HARRY: The next document, Your Honor, is NO-1639, which is introduced as Prosecution Exhibit 474. It is found on page 5622 of the record. It was introduced during the cross examination of the Defendant Poppendick. This document bears the original signature of the Reichsarzt SS, Dr. Grawitz.

THE PRESIDENT: Counsel, I don't That is correct.

MR. HARRY: The next document, Your Honor, is NO.....

THE PRESIDENT: Just a moment, Counsel, I don't observe that this document bears the signature of Grawitz.

MR. HARRY: This is a letter by Grawitz to the Reichsarzt-SS on sterilization dated 7 September 1942.

THE PRESIDENT: The pages were not clipped together. I assumed that the exhibit constituted only the first page which is a complete document.

JUDGE SEBRING: I notice that in your schedule you have 1639 and 1639-a.

MR. HARDY: That is correct, Your Honor.

JUDGE SEBRING: And yet you have three pages of one document called No. ND-1639.

MR. HARDY: Just a moment. I think at that time I was introducing them with two different signatures, and it was Your Honor's suggestion that I break them up into ND-1639 and ND-1639-a. One is a letter of Grawitz and that's perhaps why it indicates 1 of 3 pages, because we broke them up for convenience at that time, if my memory serves me correctly. 1639 is merely the correspondence to Himmler signed by Grawitz.

JUDGE SEBRING: That will be 474 and the letter by Poppendick will be 475?

MR. HARDY: That is correct, Your Honor.

The next document is ND-1639-a, which is offered as Prosecution Exhibit 475 and is found on page 5622 of the record, which is a letter signed by the Defendant Poppendick, and his original signature appears thereon.

Do you have that straightened out now, Your Honor?

THE PRESIDENT: That number document was that, Counsel?

MR. HARDY: That was 1639-a, which is Prosecution Exhibit 475.

THE PRESIDENT: Yes, we have that.

MR. HARDY: Right, now the next one. The next one is ND-1184, which is Prosecution Exhibit 476. This is found on page 5639 and was introduced during the cross examination of the Defendant Poppendick and bears the original signature of the Defendant Poppendick.

JUDGE SEBRING: Incidentally, on the left-hand side appears a hand-written statement "Ding for processing". In what handwriting is that?

MR. HANDE: That's Dr. Ding's signature in the left-hand corner, Your Honor. The other writing seems to be the same penmanship, but I recognize that as Dr. Ding's signature.

The next document, Your Honor, is NO 1182, which is offered as Prosecution Exhibit 477, which is on page 5641 of the official transcript and was offered during cross examination of the Defendant Poppendick and bears the original signature of one Vonkennel. This is an original German document on the stationery of Vonkennel.

DR. FLEETING: Mr. President, for Mrugowsky. In connection with Document NO-1184, Judge Sebring said there was a signature at the left. Mr. Sandy said that was the signature of Ding. There isn't any signature on the left here. I should like to see the original. (Looks at original)

That was not copied.

MR. HANDE: The next document, Your Honor, reference will be found on page 3 of the index. The first document on page 3 is NO-1185, which is offered as Prosecution Exhibit 478, which is found on page 5648 of the transcript and was introduced during the cross examination of the Defendant Poppendick, and this bears the original initials of Dr. Ding.

The next document, Your Honor, is NO-975. It was offered as Prosecution Exhibit 479, which is found on page 5837 of the official transcript and was introduced during cross examination of the Defendant Sievers. This is a file copy of a letter to Professor Hirt.

The next document, Your Honor, is NO-978. It is offered as Prosecution Exhibit 480, found on page 5843 of the record and was offered during the cross examination of the Defendant Sievers. It is a letter from Sievers to Gluecks. Pardon me. This is a plan of Military Scientific Research to be carried out in the concentration camp Stutensee. The original exhibit is a copy and a notation that a copy

was also sent to Professor Hirt. No signature appears on the carbon copy. However, the rank of SS-Obersturmbannführer appears below where the signature should appear. It is from the Chief of the Anstalts and is assumed to be the Defendant Sievers' letter.

The next is Document NO-935, which is offered as Prosecution Exhibit 481, found on page 5845 of the record, was introduced during the cross examination of the Defendant Sievers. The first letter in this document bears the initials of Sievers, and in addition the second letter has the signature of Sievers thereon.

The next document, Your Honor, is NO-977, which is Prosecution Exhibit 482. It is found in the transcript on page 5847. It was introduced during cross examination of the Defendant Sievers, and you will find the initials "I", the initials of the Defendant Sievers, appearing on the original document.

The next document, Your Honor, is NO-2210, which is offered as Prosecution Exhibit 483, found on page 5850 of the official transcript and was introduced during the cross examination of the Defendant Sievers, and you will note that the original document bears the signature of the Defendant Sievers.

The next document, Your Honor, is NO-1657, which is Prosecution Exhibit 484, found on page 5851 of the official record and is a document containing 4 letters. The first one bears the signature of Dr. Buchlons; the second one bears the signature of SS Brigadefuhrer Gluecke; the third letter bears the signature of Sievers; and the fourth letter bears the signature of Sievers.

The next document, Your Honor, is NO-1631, which is Prosecution Exhibit 485, found on page 5859 of the record and was introduced during the cross-examination of the Defendant Sievers. It is noted that the initials of the Defendant Sievers appear on the document.

The next document, Your Honor, is Document NO-1756, which is Prosecution Exhibit 486, found in the transcript on page 6411; it was introduced during the cross-examination of the Defendant Rose; a letter to Professor Schilling. It is a file copy.

The next document, Your Honor, is Document NO-1752, which is offered as Prosecution Exhibit 487, found on page 6415 of the record. It was introduced during the cross-examination of the Defendant Rose and bears the original signature of Klaus Schilling, a letter addressed to Professor Rose.

The next document, Your Honor, is NO-1753, Prosecution Exhibit 488, found on page 6418 of the official transcript and was introduced during the cross-examination of the Defendant Rose, bears the original signature of Schilling and is addressed to Professor Rose.

The next document, Your Honor, is Document NO-1755, Prosecution Exhibit 489, found on page 6419 of the official transcript, was introduced during the cross-examination of the Defendant Rose and bears the letter initial "R" of the Defendant Rose, a letter directed to Dr. Klaus Schilling.

The next document, Your Honor, is Document NO-1059, offered as Prosecution Exhibit No. 490, found on page 6426 of the official

record, was introduced during the cross-examination of the Defendant Rose and is a file copy of a letter addressed to the Defendant Rose, which is a report on experiments with dehydrate typhus vaccine.

JUDGE SEERING: Do you have any information about when this letter is from?

MR. HERBY: This is a letter that the Prosecution, Your Honor, I can give you more direct information now that I have studied it more closely. This is a letter which the Prosecution found in the files of Professor Haagen. It is a file copy of a letter addressed to Professor Rose.

The next document, Your Honor, is NO-1754, offered as Prosecution Exhibit 479, found on page 6460 of the official transcript, was introduced during the cross-examination of the Defendant Rose and bears the original signature of the Defendant Hrugowsky.

THE PRESIDENT: That is not Exhibit 479, Counsel; it is 491, is it not?

MR. HERBY: 491. Part is, Your Honor. 491. The next document Your Honor, is Document NO-1186, which is Prosecution Exhibit 492, found on page 6463 of the record, was introduced during the cross-examination of the Defendant Rose and bears the signature of the Defendant Rose and is addressed to the Defendant Hrugowsky. Concerning experiments with murine virus typhus vaccine.

The next document, Your Honor, is Document NO-1359, Prosecution Exhibit 493, found on page 7236 of the record, was introduced during the cross-examination of the Defendant Helts and is a file note signed or having the stamped signature of the Defendant Sievers. This is concerning Rascher's assignment at Dachau.

If Your Honor please, I request that you now turn to page 4 of the index. You will note that in Exhibit 494 the number is empty - there is no document number assigned to it. Apparently we just missed the number entirely during the course of presentation, so that

is an empty document number, Your Honors. I will give the Secretary General a file folder with the exhibit number and a notation "Not Assigned" thereon, for his files.

The next document, Your Honor, which is the first one listed on page 4 of your index, is Document NO-1328, which is offered as Prosecution Exhibit 495, found on page 7690. This was introduced during the cross examination of the Defendant Brack. For further information concerning the document I believe it will be necessary to consult the cross examination, inasmuch as I myself am not too familiar with this particular document. This letter does, however, have the signature of the Defendant Brack appearing thereon.

The next document, Your Honors, is Document NO-2893, which is Prosecution Exhibit 496, which is found on Page 7700 of the transcript, was introduced during the cross examination of the Defendant Brack by Mr. Hochwald and is excerpts from a publication by Professor Binding and Hecho, regarding the authority to annihilate life, unworthy to live. As I recall, he introduced that at that time to question the defendant concerning his attitude on the subject of euthanasia.

The next document, Your Honor, is NO-2799, which is Prosecution Exhibit 497, which is found on page 7710 of the record and was introduced during the cross examination of the Defendant Brack. At that time Defense Counsel for Brack objected because of inadequate opportunity to cross examine the affiant, I believe. The objection was overruled at that time, as the Tribunal ruled that Froeschmann could apply for the witness if he deemed it necessary. This affidavit contains a jurat and is in proper order.

The next document is NO-2429, Prosecution Exhibit 498, will be found on page 7714 of the official record, and is an affidavit of Mr. Gustav Glaussen and found to contain the proper jurat and

in good form, Your Honor. This was introduced during the cross examination of the Defendant Brack.

The next document, Your Honor, is NO-2908, which is Prosecution Exhibit 499, found on page 7721 of the official record, was introduced during the cross examination of the Defendant Brack, and on this document the original signature of one SS Gruppenfuhrer Koppe and one SS Gruppenfuhrer Sperrenberg appear.

The next document is NO-2909, which is Prosecution Exhibit 500, found on page 7721 of the official transcript, was introduced during the cross examination of the Defendant Brack, and thereon appears the original signature of SS Gruppenfuhrer Reifess.

The next document, Your Honor, is NO-2911, which is offered as Exhibit 501. Now, Your Honor might have some difficulty finding this ...

THE PRESIDENT: I do.

MR. HARDY: I note that Document NO-1461 should be NO-2911, so if you have a document that is it should be marked as Document 2911. This is a letter to SS Gruppenfuhrer Reiff, dated 22 February 1941, so that you will identify it properly for marking it, Your Honor. Do you find that discrepancy?

THE PRESIDENT: Yes.

MR. HARDY: I offer Document NO-2911 as Prosecution Exhibit 501; this is found on page 7722 of the record and was introduced during the cross examination of the Defendant Brack. This bears the original signature of SS Gruppenfuhrer Koppe, I believe.

The next document, Your Honor, is Document NO-2758, which is Prosecution Exhibit 502, which is found on page 7727 of the record, which was introduced during the cross-examination of the Defendant Brack. You will recall, I believe, that the purpose of Dr. Eichmann having submitted this during the cross-examination

of the Defendant Brock was to substantiate the chart which was drawn by the Defendant Brock, and this was some notes that he made prior to the drafting of the original chart that we have put into exhibit in, I believe, Document Book No. 1. Offhand I cannot recall the exact number of the original chart.

The next Document NO-3010, which is Prosecution Exhibit 503, which is found on page 7734 of the official transcript, was introduced during the cross-examination of the Defendant Brock. You will find this is an affidavit in good form, containing a jurat and stating the qualifications of the Tribunal.

The next document, Your Honor, is NO-2614, is offered as Exhibit No. 504, for convenience purposes. It is found on page 7735, and it is an extract from the transcript of the International Military Tribunal, duly authenticated by the Secretary General. That is 2614. That was introduced during the cross-examination of the Defendant Brack, I believe.

The next document is another excerpt from the IMT Judgment, which is NO 2737, and is given Prosecution Exhibit No. 505, for convenience. It is found on page 7740 of the record, and also used during the cross-examination of the Defendant Brack.

The next document is No. 997, which is Prosecution Exhibit 506, which is found on Page 7740 of the official transcript, which was offered during the cross-examination of the Defendant Brack.

DR. PROESCHMANN: May I ask to see the original? Mr. President I object to this document because it has no signature of any recognizable person.

MR. HARDY: Your Honor, if you will reserve your ruling on this objection until such time as I have been able to refer this to Dr. Hochwald. Unfortunately I am not in a position to tell you where each and every document we have introduced came from, and I would like to have Dr. Hochwald inform me as to this document.

JUDGE SEHRING: Does it have a printed letterhead?

MR. HARDY: No, this is purely a carbon copy, Your Honor, and from what files it came I am unable to tell you. I will have to consult Dr. Hochwald.

THE PRESIDENT: Can you obtain that information from Dr. Hochwald during the afternoon recess?

MR. HARDY: I will call him up to argue the objection, Your Honor, and then we won't have to wait for it.

THE PRESIDENT: The Tribunal will now be in recess, and you can procure the doctor in the meantime.

(Thereupon a recess was taken).

Court 1.

1 July-A-19-1-ABG-Meehan (VonSchon)

THE MARSHAL: The Tribunal is again in session.

DR. NELTE: (Counsel for defendant Handloser.) Mr. President, I have heard that you objected to my handing in a document for translation yesterday. For clarification, I should like to remark that this was not a document which I could have offered in the case for Professor Handloser. I submitted all of these documents. The document which I gave for translation yesterday afternoon for a decision: the statement of Professor Reiter on his examination of 22 November 1946. I could not give this document to the Translation Branch sooner, because I did not have the affidavit of Professor Reiter, which the Prosecution offered in Document Book 19. I ask you to take notice of this fact, and I also ask Mr. Hardy to make the statement concerning this document which he promised yesterday. I have given him the original.

MR. HARDY: Concerning that original document, Your Honor, I have had my clerks check the files to see whether or not we have received any such document from Professor Reiter while he was incarcerated here in the prison in Nurnberg. Unfortunately, I did not bring the document which Dr. Nelte gave to me, I will return it to him later, but my clerks have been unable to find receipt of any such document by the Prosecution.

DR. NELTE: Does that clarify the matter, Mr. President?

THE PRESIDENT: Yes, as far as you are concerned, Doctor, I understand.

MR. HARDY: If Your Honors please, on page 4 of the index of these documents which have been marked for identification, we now refer again to Document NO 997, which has been offered as Prosecution Exhibit 506, which is found on page 7740 of the transcript and was introduced during the cross-examination of the Defendant Brack, I believe Dr. Froeschmann has an objection. Mr. Hochwald of our office is here to argue the objection.

THE PRESIDENT: Will Dr. Froeschmann state his objection?

1 July-4-19-2-ABG-Meehan (VonSchon)

MR. HARDY: In addition to that, Your Honor, the next document on page 4, which is NO 365, which the prosecution offer as Exhibit NO 507, which was also introduced during the cross-examination of Brack, on page 7743, counsel also intends to object to that one, and Dr. Hochwald will handle both objections at this time.

THE PRESIDENT: The counsel for Defendant Brack will state his objection.

DR. FROESCHMANN: (Counsel for Defendant Brack.)

Mr. President, I object to these two documents. They are not signed, they are carbon copies of a letter which we never received, and it cannot be determined whether the original was written or by whom it was written, it is nothing but a piece of paper which was used for a carbon copy and on which there are words and sentences describing some incident. I don't believe I am too formalistic, but in view of the significance which the Prosecution attaches to this document, it might be advisable to determine who sent this letter out.

THE PRESIDENT: Please hand the original documents to the Tribunal.

MR. HARDY: While the Tribunal is perusing those documents, I might ask the Defense Counsel for Brack if he has any other documents concerning euthanasia that he intends to object to; I don't believe there are any others, but if he has any intention of further objections, I wish he would make them now while Dr. Hochwald is here.

DR. FROESCHMANN (Counsel for the defendant Brack): Just a moment.

THE PRESIDENT: These handwritten initials — capital "N", period, small "d" period, capital "H", period, capital "M", period are simply written at the bottom of the first page. They do not, apparently, correspond with any place for a signature. We will hear from Counsel for the Prosecution.

DR. HOCHWALD: If Your Honors, please, these two documents are captured documents from the files of the Ministry for the Eastern Territories. The initials which Your Honor just mentioned are indicating that this duplicate original, I do think 997 is a duplicate original, the other one, 365, is an original, were handed to the Minister for perusal. I do not know what the "N" means, but "f.d. H.M." is fuer den Herrn Minister, "for the Minister." It is obvious that these documents were written by someone — I do not know who it was — to hand to the Minister for perusal. These documents are captured documents, and if they are not signed they are perfectly admissible into evidence, and are just duplicate originals of letters which were written.

THE PRESIDENT: Counsel, these were written but not necessarily sent; what do you think the probative value of these documents is and against whom?

DR. HOCHWALD: The probative value against the Defendant Brack is that he — a conference is described in these two documents which took place in his presence, and he took part in this conference, and what was said and what was decided upon in this conference is described in these two documents. The Prosecution does not contend that this letter, NO-365, was sent to the Defendant Brack, but the

but the document itself shows what in this conference was decided; and for this purpose, this document was put into evidence on the part of the Prosecution. The file note, Document NO-997, is only supporting Document NO-365. Both documents refer, obviously, to the same conversation, or to the same conference which took place in the presence of the Defendant Brack. That Brack made suggestions for the extermination of the Jews is clear from the last sentence of Document NO-365, which says, "There are no objections against doing away with those Jews who are not able to work, with the Brack remedy." So, it is clear from this sentence that it was the suggestion of the Defendant Brack to exterminate these people by gas.

DR. FROESCHMANN: Mr. President, one document also contains the express remark "draft". It is not even certain that the letter was ever written; an unknown person has drafted a letter with no signature and I do not believe that this is a document of any probative value which could be admitted into evidence. Both documents, as a matter of fact, say "draft".

DR. HOCHWALD: Your Honor, the Prosecution does not contend that letters of this kind were written. We think this draft was for the perusal of the Minister, who obviously wrote a letter of the same contents, but what we want to prove by this document is what was the subject of this conference in which the Defendant Brack took part and what was decided there. I want only to draw the attention of the Tribunal to the fact that other documents, the Haagen documents, were put into evidence and admitted into evidence which have very much the same form and are very much of the same nature as these documents.

THE PRESIDENT: These documents apparently have some probative value in connection with the fact that a certain solution of what was called the "Jewish Problem" had been considered. Counsel for the Defendant Brack will be at liberty in his brief to argue that they have no probative value against his client. The Tribunal will then consider the probative value of the documents. The two documents will be admitted in evidence.

MR. HARDY: Then, Your Honor, I reiterate that Document NO-997 is Prosecution Exhibit 506 and NO-365 is Prosecution Exhibit 507.

We will now turn to Page 4a of the index, Your Honors.

The first document is Document NO-3282, which is offered as Prosecution Exhibit 508 and is contained on page 8860 of the record and was introduced during the cross examination of the Defendant Beiglboeck.

The next document is Document NO-3283, which is Prosecution Exhibit 509 found on page 886a. This is an affidavit which was introduced during the cross examination of the Defendant Beiglboeck. These two affidavits and two documents are in good order and have jurats thereon, Your Honor.

The next document is NO-3342, which is Prosecution Exhibit 510, which is found on page 8870 of the record and which was introduced during the cross examination of the Defendant Beiglboeck.

The next documents, Your Honor, are those documents which were introduced during the interrogation and examination of the defendant— of the witness — pardon me — Dr. Ivy. The copies that I have made available to Defense Counsel — I didn't bring additional copies, but copies of the German and the English I will make available in larger numbers to Defense Counsel for their files if they so desire.

The first one is Document NO-3967, which is Prosecution Exhibit No. 511, which is found on page 9336, which was introduced during the examination of the witness, Dr. Ivy, concerning yellow fever experiments. This is an official publication put out by the Government Printing Office in Washington D.C.

The next document, Your Honor, is NO-3906, which is prosecution Exhibit 512, which is found on page 9136 of the transcript and was introduced during the examination of the witness, Dr. Ivy. This concerns the work of Professor Strong and Professor Crowell in connection with the beri-beri experiments as published in the Philippine Journal

of Science , Volume VII, 1912.

If Your Honors will turn to Page 5 of the index, the top thereof, we have Document NO-3905, which is Prosecution Exhibit No. 513, which is found on page 9137 of the transcript and deals with the plague experiments by Colonel Strong and Professor Crowell as reported in the Philippine Journal of Science.

The next document is Document NO-3907, which is Prosecution Exhibit 514, which is found on page 9138 of the transcript and was introduced during the examination of the witness, Professor Ivy. This is a report on Trench Fever and is published by the Oxford University Press.

The next is Document NO-3966, which is offered as Prosecution Exhibit 515, which is found on page 9138 of the transcript, introduced into evidence during the examination of the witness Ivy and is an extract from material published by the Archives for Internal Medicine regarding the pellagra experiments on white male convicts.

The next document is Document NO-3969, which is Prosecution Exhibit 516, which is found on page 9138 of the transcript, was introduced during the testimony of the witness Ivy and is a statement relative to the prospective volunteers and applications for inclusion in the study of new anti-malarial compounds concerning malaria experiments at the Stateville Penitentiary in the State of Illinois in the United States of America.

The next document is NO-3968, which is Prosecution Exhibit 517, which is an application for participation in the various malaria experiments at the federal prisons. This is found on page 9139 of the transcript and was introduced during the testimony of the witness Ivy.

The next document is 3964, which is Prosecution Exhibit 518, which is found on page 9139 of the record and is an article concerning medical experimentation on human beings in Mexican orchitic typhus experiments, as introduced during the testimony of Professor Ivy.

The next is Document NO-3965, which is Prosecution Exhibit 519, which is found on page 9149 of the record and was introduced during the testimony of Professor Ivy and is a radio script entitled, "Malaria Research Report" and pertains to the details of a report given on the radio wherein the experimental subjects used at the Stateville Penitentiary in the malaria experiments in the United States were interviewed.

The next document is NO-3490, Prosecution Exhibit No. 519, which is found on page 9587, which is concerning statements of expenditures in connection with influenza research assignment by Haagen and was introduced during the examination and cross examination of the witness, Professor Haagen.

The next document is NO-2874. This is offered as Prosecution Exhibit 520 and is found on page 9651. It was introduced during the examination of the witness Haagen and is a file copy of an original document which was found in the Gaagen files. This is a letter from Haagen to Rose regarding the production of vaccines.

The next document, Your Honor, is NO-3852, which is Prosecution Exhibit 521, found on page 9656 of the record, concerning the testimony of the witness Haagen, and is entitled "Professor Haagen's diary concerning "Vaccine typhus yolk bags, dried."

The next document, Your Honor, is Document NO-2631, which is offered as Prosecution Exhibit 522, which is found on page 9955 of the record and which is an affidavit of Joseph Ackermann, which was introduced during the examination of the Defendant Hoven. This is in due order, Your Honor, and has the necessary Jurat thereon.

The next document, Your Honors, is NO-2313, which is offered as Prosecution Exhibit 523 and is on page 9958 and is a corporal punishment report of prisoners of the concentration camp Buchenwald which was introduced during the examination of the Defendant Hoven. This morning the Defense Counsel for Hoven requested that he be allowed to have an expert examine the words on the top of this document,

and I am advised that the advice he received by his expert coincides with the information conveyed to the Tribunal by the interpreters in this courtroom. That word is "died."

DR. GAVLIK(Counsel for Defendant Hoven): Mr. President, I merely want to object to the copies which were given to the Tribunal. It just says, "Signed, signature." The document, however, shows that this was not signed by the defendant, Dr. Hoven but by someone named Plaza. I should like that to be put in the copies so that there is no confusion with the Defendant Hoven.

MR. HARDY: There is absolutely no confusion, Your Honor. The Prosecution never purported that that was the signature of Hoven. We said that we were unable to determine whose signature that was. I put it to Hoven, and I think the record indicates that Hoven figured it out to be Plaza.

THE PRESIDENT: I remember the matter of this document. It was not contended that it had the signature of the Defendant Hoven.

MR. HARDY: The next document, Your Honor, is NO-2312, which is Prosecution Exhibit 524, which is found on page 9960 of the record. I introduced it during the cross examination of the Defendant Hoven, and on the reverse side the signature of Hoven appears there and, if I recall correctly he identified it during the course of his examination.

The next document is Document NO-1944, which is Prosecution Exhibit 525, found on page 9965 of the record. It was introduced during the examination of the Defendant Hoven and pertains to the securing of equipment for installation in Block 50 at the Buchenwald concentration camp.

The Next document , Your Honors, is NO-2366.

JUDGE SEERING: Just a moment, Counsel.

MR. HARDY: Does Your Honor have those last documents in order?

The next document is NO-2366, Prosecution Exhibit 526, found

on page 9969 of the record, which was offered during the cross examination of the Defendant Hoven.

The next document is NO-2380 , which is Document 527, which is found on page 9970 , which was offered during the cross examination of the Defendant Hoven.

DR. GAWLIK: (Counsel for Defendant Hoven): Mr. President, I object to this document. The document has no signature. It is simply a copy of a copy.

MR. HARDY: Your Honor, this document is in addition to the other document attached thereto. The two documents were found together, and an affidavit is attached to the two documents which reads as follows:

"Affidavit. I, Dr. Robert M. W. Kempner, Deputy Chief of Counsel, certify that I have received the documents described as brief against Standartenfuhrer Koch and others, which is NO-2366, written by SS-Hauptsturmfuhrer Dr. Morgen, and papers relevant to corruption in criminal cases against SS officers from the personal effects of Dr. Morgen to Captain Gutmann of the M.I.S., That is the Military Intelligence Service," Interrogation Center, Oberursel, Germany . Signed: Dr. Robert M. W. Kempner, 16 April 1947."

THE PRESIDENT: I do not find any such certificate attached to the document before me.

MR. HARDY: This pertains to both documents, Your Honor. For the convenience of the Tribunal I did not give Exhibit 527 and Exhibit 528 the same document number. They came under the same cover. The affidavit of Dr. Kampner applies to both documents, as you can see. I have given them individual document numbers and exhibit numbers for the convenience of the Tribunal.

THE PRESIDENT: I don't find any statement by Dr. Kampner in connection with either of the documents.

MR. HARDY: It's in the original document, Your Honor. I didn't have that reproduced, as I only gave you extracts of the original document. I will pass it up to Your Honor for his approval.

DR. GARDIK: Mr. President, this does not indicate that it refers to this document too. This document has no signature. There is no indication where it comes from, who signed the original. It is simply a typewritten piece of paper.

MR. HARDY: I request that the Defense Counsel read the affidavit of Dr. Kampner attached to these papers, and I am informing Defense Counsel that these two documents come under that affidavit as stated in the affidavit by Dr. Kampner. If necessary I will get Dr. Kampner to execute another affidavit if that isn't clear enough.

THE PRESIDENT: The probative value of these documents may be doubted, that is a matter of argument, but they will be received in evidence, and Counsel for the Defendant may argue in his brief against the documents as having no probative value, and then they will be considered by the Tribunal.

MR. HARDY: The next document, Your Honor, is an affidavit which is document No-3963, which is Prosecution Exhibit 528, an affidavit of Earl Tambrock which I introduced during the cross examination of the Defendant Pokorny. This has a jurat thereon and is properly

authenticated and certified thereto. Your Honor, that completes the entire list of documents which the Prosecution introduced during the case of the defense and marked for identification.

Now, at this time, Your Honor, I wish to distribute to you and to Defense Counsel German copies of affidavits which the Tribunal have admitted provisionally upon procurement of a jurat by the Prosecution. I have them bound together in a little volume so that we can introduce them formally now, inasmuch as they are only accepted provisionally pending the receipt of jurats.

Do the interpreters and court reporters have copies of these? I will merely refer to numbers and not read the particular affidavits. If Defense Counsel has an objection, if he will kindly wait until I get to that particular affidavit? If Defense Counsel will put on his headphones and hear my presentation he may withdraw his objection. Would you tell Dr. Froeschmann to put on his headphones and he will hear when I present the documents? Would you kindly tell Dr. Froeschmann to put on his earphones and hear my presentation of the documents before he starts to object to these documents?

THE PRESIDENT: He has them on, counsel. He is wearing them right beside you there.

MR. HARDY: He took them off now. These documents, Your Honor are already now in the hands of the Secretary General in proper order. I didn't have them brought into the courtroom. The first one is Document NO-881, which was offered as Prosecution Exhibit 280 in the early days of the defense's case, and this was introduced by Mr. Mc Haney, I believe, on the 28th day of January, and it was admitted provisionally at that time pending the authority of the person issuing the oath. The person issuing the oath was Guy Favarger, and as you will remember, that was cleared up in an affidavit by the Chief of Counsel, General Telford Taylor, and when Mr. Mc Haney went

through these particular documents this was one that he omitted to take up at that time before the Tribunal.

This is in proper order and contains a jurat, and at this time I offer it formally for acceptance into evidence rather than provisionally.

JUDGE SKERING: Counsel, I didn't understand. What document book was that in?

MR. HARDY: Just a moment, Your Honor. It is Exhibit 280, Your Honor, and you will find it in Document Book No. 13. The next document, Your Honor, is the affidavit of Ludwig Lehner. This affidavit is in good form and now has a jurat. It is Document NO-863, which is found in Document Book 14, part I, and the jurat now is signed by Herbert H Meyer, and you will note he is on the list who has the authority to administer oaths as granted by General Telford Taylor, Chief of Counsel.

DR. FROMSCHLAGER: Mr. President, if I remember correctly the witness Lehner offered an affidavit with a considerably different content and a different date. The affidavit that is now offered bears the date 30 March 1947. I cannot remember that this affidavit was offered, then I object to it, because this document was signed at a time when it could have been shown to the Defendant Brack or the witness Pfannmueller.

MR. HARDY: Your Honor, I submit that of course when a person swears to a signature they have the document retyped and the man signs in his presence, but I can overcome that and put it in as a rebuttal document if Your Honor wishes to strike the other one and take this as a new one and give it a new exhibit number or let it retain its old one. It rebuts evidence given by the defendant and by the witness Pfannmueller. Whatever Your Honors wish to see, this document now contains a jurat in the order prescribed by the Tribunal

for admissibility. If Your Honors wish to have it bear the same exhibit number or have me give it a new exhibit number, I will do whatever you wish.

THE PRESIDENT: Do I understand that the objection made to this document made when it was first offered was that there was no jurat attached?

MR. HARDY: The first objection, Your Honor, was because it was not a sworn statement, and now it is a sworn statement.

THE PRESIDENT: Of course when an affidavit is sworn to it must be dated the day upon which it was sworn to, not some prior date.

MR. HARDY: That's correct, Your Honor.

THE PRESIDENT: If it is admitted that this document is the same document that was admitted provisionally upon being again altered to the proper jurat, then it will now be admitted. Of course, if it is a different affidavit, different questions are to be presented.

MR. HARDY: Inasmuch as I don't have both affidavits, Your Honor, I will assume for convenience that it is an entirely different affidavit, and I will give it a new exhibit number and offer it as a rebuttal document. It seems to me immaterial whether—

THE PRESIDENT: It is entirely immaterial.

MR. HARDY: It's in perfect order, and if it is different, it perhaps may be different in form in make one or two words, but in substance I am sure that it is the same. I imagine we sent Mr. Meyer all the way up to St. Wolfgang near Wasserburg in order to obtain this jurat and have him reexecute the affidavit in his presence.

THE PRESIDENT: If there is any variation in the affidavit it should be admitted as a new exhibit.

MR. HARDY: Then, Your Honor, I will give it a new exhibit number. This is Document NO-863 which is Exhibit NO-561, Prosecution which was formerly Exhibit NO 333. If Your Honors will put that

down, and if any reference is made to this in our briefs as Exhibit 333 we will be referring to Exhibit 561, and we withdraw herewith Exhibit 333 as such.

The next document that I had contained in this little collection of affidavits happened to be the affidavit of Hoven which was cleared up this morning by the Tribunal and is in evidence as Exhibit 281, so I will not discuss that at this time. Your Honors, of course, have copies of all these, either in your document books or submitted later when used then at later days during cross examination periods.

The next document is Document NO-910, which is Prosecution Exhibit 136, which was the statement of Ignatz Bauer, which was as you will recall, from the Vienna police file. The document now contains a jurat, as I had it sent down there and a member of the C.I.C., Lionel A. Schaffro, called in Mr. Bauer and took his oath.

JUDGE SEHRING: Did it appear in a book?

MR. HARDY: Pardon, Your Honor?

JUDGE SEHRING: Did it appear in a document book?

MR. HARDY: Yes it did, Your Honor. Just a moment-138 was in Document Book NO-6, Your Honor. That's the sea-water documents. The next document, Your Honor, was an affidavit which was NO-911, which is Prosecution Exhibit NO-139, and similar to the Bauer affidavit this affidavit of Tschofenig also did not have a jurat thereon, and I have obtained that. That was in Document Book NO-5, the same situation.

THE PRESIDENT: What is the exhibit number of this document?

MR. HARDY: The Exhibit number of that is 139. The next document, Your Honor, is an affidavit of Pillwein, which was NO-912, which is Exhibit 140 and like the other two documents did not have a jurat thereon and was admitted provisionally, and now there copies

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bear the jurat. That's Exhibit 140 and is also found in Document Book No-5. Also, Your Honor, the last document is NO-1427, which is Exhibit NO-431, which was an affidavit which was sworn to by Mr. Rodell, and Mr. Mc Haney omitted to include this when he read off the documents or affidavits sworn to by officers certified by General Taylor's affidavit which gave them the authority to administer oaths. At this time I am calling that to your attention, inasmuch as it was admitted provisionally, and I am calling to your attention now that Exhibit 431, which is in Document Book NO-16, contains a proper jurat.

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I think, Your Honor, that clears up all of the Prosecution exhibits which were admitted provisionally and which were admitted for identification. I have one more Prosecution document book, rebuttal document book, which is being prepared, which I will offer as soon as it is completed. At this time, Your Honor, I have one copy of the judgment of the International Military Tribunal, a bound volume which was published officially, and I wish to present this to the Tribunal and request that they take judicial notice of the judgment of the International Military Tribunal. I do not believe it will be necessary to give that a document number. This is the entire judgment. The specific sections of the judgment which the Prosecution and the Defense have wished the Tribunal take judicial notice of have been put in individually, but this contains the entire judgment of the International Military Tribunal, for judicial notice of this Tribunal.

THE PRESIDENT: That copy should be marked in some way, as indicating that that copy has been turned over to Military Tribunal I in connection with this trial.

Mr. HARDY: Your Honor, I will give it an exhibit number if that will be convenient.

JUDGE SEERINC: If you give it an exhibit number you may be placed in the position of having to furnish copies to the Court and to all counsel. I would suggest you give it to the Secretary General and let him stamp it "Filed" before him.

Mr. HARDY: Fine, Your Honor. With the exception, Your Honor --

THE PRESIDENT: This book should not have an exhibit number. My suggestion was that it merely be marked as the identical copy which was placed before the Tribunal to be used in referring to matters of which the Tribunal should take judicial notice.

Mr. HARDY: Yes, Your Honor. Now, Your Honor, that completes whatever evidence I have to offer in rebuttal, with the exception of one document book which I am now preparing and which I hope to have ready

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in due course. I, unfortunately, do not have it ready today, and I will check on it this evening. It is a document book which will contain the two interrogations I referred to in connection with the Hoven affidavit; also one other affidavit of the witness who appeared here, the witness Horn, which I am offering in rebuttal; and it has in it several decrees concerning Austria and other countries as to the status of the people and citizens of those countries after the occupation by Germany; and has, I believe, one order of Himmler. Other than that I have no further evidence to offer in rebuttal unless I have something of a miscellaneous nature that appears in the next few hours, and I am now ready to turn over the rest of the time to Defense Counsel to introduce their supplemental document books.

THE PRESIDENT: Counsel, in connection with your phrase "due course", how long do you estimate the course will be?

Mr. HARDY: Your Honor, I will check on it this evening. I think the prosecution has now got very little left to put in. We are putting in these decrees, and so forth, and it will take a little time to process the documents, I think we have the translations pretty well in hand, and as soon as I can have it assembled I will introduce it. It will be before the end of the session on Thursday, I assure you.

THE PRESIDENT: Very well, That was that I was concerned about. The Tribunal will now hear Defense Counsel who have any documents to offer. I have some on my desk. Here's a document book, Appendix 2, by defendant Woltz.

Mr. HARDY: Defense Counsel for Defendant Woltz is not here in the Courtroom, Your Honor.

Dr. FLEMMING: Mr. President, you just said that you had documents from several defense counsel. Would you be kind enough to tell me all the names, and then I shall see which of those defense counsel I can find.

THE PRESIDENT: I was just going through the list, Doctor. Defense Counsel Boehm, for Poppendick.

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Mr. HARDY: Your Honor, it may well be that some of these document books that you have had delivered to you as supplemental document books have already been introduced and Defense Counsel gave you copies of them during the time that they were introducing them and you have just received, through channels, your official copy. I found that same situation. I picked up a lot of supplemental books this afternoon and discovered that they had already been introduced. I was rather glad that we had something to put to the Tribunal today but I found myself to be badly mistaken. There are no other supplemental books available at this moment that I noticed.

THE PRESIDENT: That is possible. I have two copies in German, apparently each one of No. 4, on behalf of Defendant Karl Brandt.

Mr. HARDY: If Your Honor will hand down to me the copies you have before you, I can tell you whether they have been introduced yet or not.

THE PRESIDENT: Very well.

Mr. HARDY: The one that you have, the German copy of Dr. Servatius, has not been introduced to my knowledge, Your Honor. The one on Defendant Welts has been introduced. That was introduced by Dr. Will this morning -- that is the affidavit of Dr. Wirth. I am not certain about this affidavit on Poppendick's behalf, affidavit of VonKantzel. It seems to me that it was introduced. I am uncertain, actually.

THE PRESIDENT: I seem to have some recollection of that now, but I am not sure.

Mr. HARDY: Other than that, Your Honor, there are no supplemental volumes available. This one of Dr. Servatius, that is in German, do you have an English copy of that?

THE PRESIDENT: Not unless it was delivered some time ago. I do not think that we have.

Mr. HARDY: In view of the circumstances, Your Honor, I think we are at a stalemate now and will have to adjourn until translations are available.

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THE PRESIDENT: It seems so.

Dr. SAUTER (Counsel for the Defendants Blase and Raff): Mr. President, the situation is now as follows: Various defense counsel still have documents in the Translation Branch. I doubt whether the translations of these documents will be ready by tomorrow or the next day. I wondered now the situation could be dealt with, since we are at the end of the presentation of evidence. I had the following idea. I should like to suggest this to the Tribunal and perhaps the Tribunal will agree with me: If the defense counsel can give the Tribunal the German original of these documents which were have been down for translation but not returned yet, and assign an exhibit number to them, then it might be possible, in order to expedite proceedings, for the Tribunal to accept these documents provisionally, under the condition that the Translation Branch then sends the translations to the Tribunal. This will be done automatically - we have no influence on that. But this procedure might make it possible for the Tribunal to settle the whole question of the documents not yet received without delaying the case. We would be grateful Mr. President, if you could tell us whether it can be done in this way.

THE PRESIDENT: It seems to me that Counsel for the Prosecution made some such suggestion.

Mr. HARDY: Your Honor, I have a suggestion that we might follow. It appears to me that with the exception of the Defendant Sievers, the Defendant Schroeder, and the Defendant Brack, all other defendants only have maybe one or two miscellaneous documents to introduce. If they have German copies of these documents, it would seem to me that they could introduce them, bringing the original with them. In most instances I imagine they are affidavits which have jurats thereon. The question of admissibility I can easily determine by seeing whether or not the affidavits are attested. Then they can introduce them, and if the particular sections to which they have reference are not too extensive, they can slowly read them, and we could have those particular translations in

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the record, and then at a later date we could get the official translations from the Translation Department and have them included in our document books.

THE PRESIDENT: That would appear to be entirely feasible.

Mr. HARDY: So, Your Honor, as I see it, we can wait on the Defendant Brack, the Defendant Sievers, the Defendant Krugowsky, and the Defendant Schroeder, and then we could clean up these single documents that other defendants have to offer in the manner I have just outlined. I will confer with Mr. Hedges, Chief of the Translation Department, and ask him how long he thinks it will take to complete these other translations, if you will wait just a moment.

THE PRESIDENT: I understood from Mr. Hedges that some documents would be available tomorrow morning.

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DR. SAUTER: Mr. President, another possible procedure would be - I don't know whether the American court would approve it - that the defense counsel first give the Tribunal and the Secretary General the original of the documents still outstanding and that during the recess before the final pleas, the Prosecution can determine whether they have any objection, and then the Tribunal might inform the defense counsel in writing whether the documents are admitted or not. That might expedite matters even more, but I don't know whether that is permissible under your rules.

THE PRESIDENT: I wonder how many documents will be available in the morning. Can Mr. Hodges give us any information on that?

MR. HARDY: Mr. Hodges informs me that the documents of the Defendant Krugowsky will be ready in the morning and the documents for Rose will be ready in the morning, or nearly ready. He thinks the documents for Krugowsky will be entirely ready and the Rose documents may take a few minutes but will be ready in the morning. It seems to me that defense counsel might get together all the miscellaneous documents - I see Romberg has 1 document, Hoven has three documents, Fokorny has two documents - and get them together in the German language. I presume that 99% of them are affidavits. If they properly sworn to, then there is no point for objection on the part of the Prosecution, unless there is evidence in the nature of re-rebuttal evidence, and the Tribunal could determine that at a later date when they get the copies, and then they could guide themselves in the use of them and we could forestall any other difficulties here.

THE PRESIDENT: I understood that these documents by the defense that you mentioned were practically ready to be presented to the Tribunal in the usual form. I don't know when those documents were presented. Mr. Hodges assured me that all documents which had been given to him up to a certain hour in the morning last Saturday would be here by Wednesday morning. They will be here, I understand. Now

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the only documents which will not be presented tomorrow are documents that have been delivered this week, delivered yesterday and today.

MR. HARDY: From looking at this list, Your Honor, it doesn't seem to me there are more than a handful of documents, after you eliminate the Brack documents, the Mrugowsky documents, the Schroeder documents, and six documents for Karl Brandt, and it is my assumption that, of course, Defense Counsel for Mrugowsky and Brack and Schroeder must have had their documents in before last week.

THE PRESIDENT: Well, the documents for the Defendant Mrugowsky, Mr. Hodges informed me, were turned in on last Friday, June 27.

MR. HARDY: But he says these will be ready tomorrow morning.

THE PRESIDENT: He says these will be ready tomorrow morning.

MR. HARDY: Then, after you eliminate those three large document cases, you only have miscellaneous documents from each one of the other defendants. It seems to me they could put those in through the interpreters.

THE PRESIDENT: It seems to me also that if Defense Counsel who just have one or two documents could be prepared to have those documents here in German and that some system can be evolved whereby they can be received in evidence and possibly the important parts read into the record. Of course I understand tomorrow morning we have quite a bit of work to do on the documents which will be ready at that time.

MR. HARDY: Your Honor, could it be possible for Your Honor to issue a directive that all defense counsel be here tomorrow morning with the documents they wish to put into evidence so that we can go take up each case and go through document for document, be it translated or be it not translated.

THE PRESIDENT: All counsel will be in attendance before the Tribunal at 0930 o'clock tomorrow morning and have their documents either in German and English or in German, and the matter can be presented to the Tribunal and we will find out just exactly what has

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to be done.

Anything further, doctor?

DR. SAUTER: No. I will see to it, Mr. President, that all the defense counsel are here at the beginning of the session tomorrow morning.

PROESCHMANN (for Brack): Mr. President, I would be able to give you all the German documents. Six of them were handed in for translation last week and the other four yesterday or today, because I received them only yesterday or today. If the President desires I could offer these documents right now and save time for tomorrow morning.

THE PRESIDENT: What day were the six documents last week handed in for translation, do you know?

DR. PROESCHMANN: They were handed in on 23 June, Mr. President.

THE PRESIDENT: Well, I wonder if these are included in the documents which will be ready tomorrow morning. Could Mr. Hodges advise us?

MR. HARDY: Your Honor, the Brack documents will be included in those ready tomorrow morning, the six that he put in last week. I propose that he introduce them all together, and he can put the ones that haven't been translated in after he has put in the six. I think if all counsel are here tomorrow morning we can reach some understanding and put them in in the German language and get the translation at a later date.

THE PRESIDENT: Will all the defense counsel be present with their documents either in German and English or in German tomorrow morning at 0930 o'clock.

The Tribunal will now be in recess until 0930 tomorrow morning.

Official transcript of the American Military Tribunal in the matter of the United States of America against Karl Brandt, et al, defendants, sitting at Nurnberg, Germany, on 2 July 1947, 0930-0945, Justice Beale, presiding.

THE MARSHAL: Persons in the court room will please find their seats.

The Honorable, the Judges of Military Tribunal I. Military Tribunal I is now in session. God save the United States of America and this Honorable Tribunal. There will be order in the court.

THE PRESIDENT: Mr. Marshal, will you ascertain if the defendants are all present in court?

THE MARSHAL: May it please your Honor, all the defendants are present in court with the exception of the defendant Oberhouser, absent due to illness.

THE PRESIDENT: The assistant Secretary General will note for the record the presence of all the defendants in court save the defendant Oberhouser who has been excused on account of illness.

The assistant Secretary General has an announcement to make for the benefit of defense counsel. Will the assistant Secretary General take the podium and make his announcement.

ASSISTANT SECRETARY GENERAL: I wish to take this opportunity during open proceedings to clarify some administrative matters with the defense counsel. It is frequently difficult for me to clarify those points with you individually because of difficulties in German and English. I don't speak too well in German and I don't understand too much.

Be advised that unless your documents are properly submitted to me and in certain cases your case will be jeopardized to a certain extent because I intend making a report to the Tribunal on the condition of those exhibits prior to the time they are considered. I placed a piece of paper on each desk and I wish you would make these notes as to what information I require.

First, I would like to know how many document books have been prepared for each defendant. Listed under those document books as supplements there is an additional group of documents. For example, you have Document Book I and Supplements 1, 2 and 3 to Document Book I, etc., down to 4 or 5 document books. In addition to that, I need to know what exhibit and the corresponding document numbers are found in those document books and supplements. I need to know the document book and page on which those documents are found. I need to know what was the date when the document was formally accepted into evidence. Further, I need to know what witnesses have appeared on the behalf of your defendants and what date they appeared.

Recently, I sent to each member of the defense counsel a list, that is a mimeographed or typewritten form, for you to fill out and Captain Rice asked you to fill that out and send it back to me. I wish that you would bring that up into final form and submit it to me at the termination of your case, some time in the next few days. I have only two of those so far. If you have turned this in to Captain Rice get it back and make a complete report to me on that matter.

Some time within the next few days I would like each and everyone of the defense counsel to come into my office, which is room 272. Bring your secretary and consult with me on the matter of those exhibits, bearing in mind that I have only been in this case for a couple of weeks and there is a lot of information which I don't have and must have to certify the record in its final form when it is sent forward for review.

I would appreciate your cooperation in that respect.

Now, I might ask before I leave the podium if there are any questions from defense counsel. Perhaps Dr. Servatius could speak for the defense counsel and ask my questions, or any other counsel if you have any questions. It is fairly simple. Give me a complete picture of your documents, your document books, the exhibits, the

exhibit numbers, and the pages on which they are found in the document book.

DR. SERVATIUS: Mr. President, the only objection I can submit is a lack of time. We all have only one secretary each. We shall hasten to meet the wishes of the Secretary General so far as we can; we are also interested in achieving clarity in this matter. I shall, therefore, be grateful if we could have a certain extension of time because we also in addition to this have to conclude our closing briefs by 7 July. After that we can handle this matter.

THE PRESIDENT: Well, counsel, as stated by the Assistant Secretary General, this record is required by him largely for the purpose of certifying the record to the Military Governor for review of the judgment. That matter will not have to be certified for some time. So, it does not seem to me that this matter should interfere with what you have to do now. The Assistant Secretary General is required by his official duties to certify this record after it is complete, but that, Mr. Secretary General, will not have to be done until after the judgment is returned in the case. So, I think that the work need not interfere with the preparation of the briefs and the immediate pressure under which everybody is working within the next ten days.

ASSISTANT SECRETARY GENERAL: I wish to explain this further. I am not completely familiar with my records. I have the records up 99% correct and all I need is a little information from you to make sure I do have them correct. Maybe you misunderstood me or I didn't make myself clear in that respect, but a visit, not necessarily from you, from your secretary or your assistant defense counsel, would serve the purpose. Just come to me sometime before you leave Nurnberg and finish this case and see that you have completed your records. This can be taken care of in a matter of a few minutes. It is very simple. Thank you.

MR. HARDY: May it please the Tribunal, Dr. Tipp introduced an affidavit concerning the translation of document NO-185. Prosecution feels that they do not wish to reach an agreement as to the acceptance of that translation. Prosecution has submitted a translation on review of their Translation Department which they wish to content to be the proper translation. The defendants Schroeder and Becker-Freysang, represented by Dr. Tipp, have an alternative translation. Prosecution will not object to the admission of the affidavit as to the alternative translation and feel it should be left up to the Tribunal to decide on the basis of the context and any other evidence, which meaning is intended.

THE PRESIDENT: Very well.

MR. HARDY: If the Tribunal wishes Dr. Tipp can read his new translation into the record or would you like to have that prepared in another form? And Prosecution will read theirs in again. However, ours does appear in the record on one occasion.

THE PRESIDENT: I don't know in what form Dr. Tipp's statement is prepared.

DR. TIPP: Dr. Tipp for Schroeder and Becker-Freysang. The new translation, Mr. President, has been prepared by me in the usual form of an affidavit which was drawn up by the head of the English Department of the Interpreters Institute of the University of Heidelberg. I think it would be well if this affidavit could be read into the record in the same way that the expert opinion on the part of the translation branch was read into the record. The translations are not yet in.

THE PRESIDENT: Very well, counsel. Proceed. Well, then I would suggest we wait until they are in so that we might follow you. How long is the affidavit, counsel?

DR. TIPP: This affidavit is 2 pages, your Honor.

THE PRESIDENT: You may proceed to read it now.

MR. HARDY: He has the affidavit both in English and German language it is notarised in both languages. Seems to me that he could have a stencil cut today. It would only be a matter of 10 or 15 minutes.

THE PRESIDENT: We expected we would have copies. We would like that but I since counsel brought the matter up he may read it into the record and furnish the stencil later.

DR. TIFF: This is Becker-Preyseng Document No. 80.

MR. HARDY: It would be difficult for the translators to follow in this brief argument that is prepared in the affidavit without copies unless he goes very slowly. I think it could be taken up later.

THE PRESIDENT: Very well, we will wait until the English translation comes in.

DR. TIPP: This is Becker-Freyseng Document 80.

We have the English translation, Your Honor, if you would like to have it read now.

This is an affidavit by Franz Rudolf Mattis, who as I have already said is chairman of the English Department, of the Interpreters Institute, University of Heidelberg. The document reads, "Expertise: The Document No. NO-185, submitted by the prosecution contains the following sentences:

"Ich stehe heute wider vor einer Entscheidung,
die nach zahlreichen Tier-und auch, Menschen-
versuchen an freiwilligen Versuchspersonen eine
endgultige Losung verlangt: die Luftwaffe hat
gleichzeitig wei Verfahren zum Trinkbarwachen
von Meerwasser entwickelt."

The question to be clarified is whether this sentence is ambiguous, and what translation does it justice.

The sentence is somewhat slipshod, apparently written or dictated in haste. However, the stylistic defects -- such as "a decision which demands a solution" -- do not affect the logical implications of the sentence: these rather derive from the adverbial modifications "after numerous experiments on animals and human beings too" (nach zahlreichen Tier - und auch Menschenversuchen) and "upon voluntary test persons" (an freiwilligen Versuchspersonen).

If this sentence is spoken rhythmically as it ordinarily would be, a definite rest follows "Menschenversuchen", leaving the adverbial phrase "an freiwilligen Versuchspersonen" to be related to the verb "verlangen." Thus, the following English translation results:

"I stand today again facing the necessity of making a decision which, after numerous experiments made upon animals and human beings too, demands conclusive experimentation on voluntary test persons."

If , on the other hand, the German sentence is arbitrarily read in some such way as:

"Ich stehe heute wieder vor einer Entscheidung,
die nach zahlreichen Tierversuchen - und auch
Menschenversuchen an freiwilligen Versuchspersonen -
eine endgültige Lösung Verlangt."

The English equivalent would shape as follows:

"I stand today again facing the necessity of making
a decision which , after numerous experiments on
animals as also on voluntary test persons, demands
conclusive investigation,"

Such arbitrariness, however, seems to me indefensible."

It follows the signature and certification by the Notary, in
Heidelberg.

THE PRESIDENT: The affidavit may be received in evidence.

MR. HARDY: Your Honor, in order to keep the record straight it
might be advisable to read the Prosecution's translation at the same
time with this one, so it may be put in. This memo has been put in
the record before. I merely will read the prosecution's contention.
Document NO 185, is that the translation in issue should read as
follows:

"Today again I stand before a decision which after numerous
animal as well as human experiments on voluntary experimental
subjects demands a final solution."

THE PRESIDENT: Very well. The record is now in concise form
before the Tribunal.

The Tribunal has received Supplement IV, document on the defendant
Brack.

Counsel may proceed to offer these exhibits.

DR. FROESCHMANN: Froeschmann for Brack.

This morning I was informed, Your Honor, that supplemental
Volume IV has been translated into English and handed to the Tribunal

I was further informed that Supplemental Volume V, which was turned in day before yesterday to the Translation Department has not yet been translated.

The documents from Document Book V which have not yet been translated, any I put them to the Tribunal in the original German, so that I can conclude the presentation of these this morning ?

THE PRESIDENT: Yes, counsel may do that with the consent of the Counsel of the Prosecution. Is that satisfactory with the prosecution?

MR. HARDY: My understanding is he is going to offer Supplemental Book V in the German. I will follow him with the original exhibits, Your Honor. It is perfectly satisfactory.

THE PRESIDENT: Counsel may proceed.

DR. FROESCHMANN: I shall then put in from supplemental book IV for Brack, Document 55, the affidavit —

THE PRESIDENT: Counsel, the first document in this book is Document 53.

DR. FROESCHMANN: Yes, but I wish to put these in somewhat more different order, in order to make them more perspicuous for the Tribunal, and I wish to begin with Document 55.

THE PRESIDENT: Very well, Counsel.

DR. FROESCHMANN: The first document will be Document 55, affidavit by Heinz Heggenrainer, 8 May 1947, Exhibit 45, which is on page 13, Book IV. It is signed by Heggenrainer and certified by the local Mayor. I shall now give the original to the Secretary General.

Document 56, affidavit of Karl Freiherr Michel von Tuessling, of 9 June 1947, page 15, Book IV. Document 56, Exhibit 46. Now, from supplemental Volume V, which the Tribunal does not have, I put in further affidavit —

MR. HARDY: I don't see the reason for jumping around from one document book to another. Why can't he content himself with Book IV, and then go to document book V.

THE PRESIDENT: Yes, Counsel, proceed with Document Book IV, and then proceed to Document Book V.

DR. FROESCHMANN: Then I continue with Document 57, affidavit of Thea Brack, 7 June 1947, Document Book IV, page 7, Exhibit 47. The original I am now handing to the Secretary General. This proves that the defendant Brack, as brought to light in my defense in June 1944, met Brigadefuehrer Globocnik in Berlin.

Now, comes Document 53, the expert opinion of Dr. Walther Rump, 11 June 1947, Exhibit 48.

MR. HARDY: I must object to this affidavit. This affidavit of Dr. Rump contains information concerning the availability of X-ray tubes, and their consistency. On page 4 it says they are no longer available after 1942, and on page 9 it states no longer available after 1941. As to the probative value of the document, it seems there isn't any. If X-ray tubes were available in 1942 they certainly would be available in 1941, and it seems that X-ray could be performed if there was one tube as the witness Belicky said he was sterilized by X-ray machines, and the photographic evidence bears this out. The affidavit shows inconsistency in dates. This affidavit has no probative value whatever, and is immaterial when the manufacture of these tubes took place.

DR. FROESCHMANN: I do not understand the prosecution's objection. In Dr. Rump's expert opinion of 11 June 1947, it states on page 9, perfectly clearly, consequently it is my task to ascertain whether at the beginning of 1941 it was technically possible to administer an X-ray dose of 300 r to females and 500 r to males, in order to bring about a state of sterility. The date mentioned here is 1941.

This, Your Honor, is on page 2 of the English translation, sentence before the last.

Now, Document NO 203 and 205 referred to the date March 28, 1941. In other words, this expert is investigation the possibilities of permanent sterilization at precisely the time that this report is drawn

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up. Therefore, I cannot understand why the prosecution wanted to say that this expert —

THE PRESIDENT: Counsel, the Tribunal will receive this document in evidence. Counsel for the prosecution may call attention to any discrepancies therein in the prosecution's brief and supplemental brief. This document will be admitted as Brack Exhibit 48.

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DR. FROESCHDANN: In this affidavit, I should like to draw the Tribunal's attention to the concluding passage which states the expert's opinion that at that time it was not possible to carry out a permanent sterilization in this way.

The next document will be Document No. 54, an affidavit of Fleikard Stumpf, 20 June 1947, page 10. He considers the question from the specialist's medical point of view whether on the basis of report NO. 205 sterilization was possible. He says "No". I gave the original to the Secretary General. This is Brack Exhibit No. 49.

The next document will be Document No. 58, an affidavit of Mrs. Ther Brack of 7 June 1947, page 18. The prosecution yesterday put these two documents in which I objected to, from which the representative of the prosecution, Dr. Hochwald wanted to prove that Brack participated in the extermination of Jews. In the cross-examination, I have already raised an objection to this and in three exhibits I have proved that during the time from September, 1941 until the end of October, 1941, the defendant Brack was on sick leave in Southern Germany and in Tyrol. The details of what went on during this sick leave are to be ascertained from this affidavit, of Mrs. Brack, which I now put in as Brack Exhibit No. 50.

In this connection, I likewise put in as the next document, Document No. 59, an affidavit by Walther Kieffol, dated 24 June 1947. He also confirms that in October of 1941, Brack was in Southern Germany, and Tyrol on vacation and consequently between the 18th and 25th of October he could not have had any conference with Wetzel. This document will be Brack Exhibit No. 51.

So much for Book 4.

Now, Book 5, containing affidavits, to wit; the following five documents, two of these documents contain affidavits by the Defendant Brack, regarding the documents which were put to him during the cross-examination or put in very recently. These are documents No. 63 and 64.

MR. HARDY: Your Honor, I challenge the admissibility of affidavits

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concerning documents which we put to the Defendant during cross-examination; he had ample time to explain the documents at that time; the purpose of them during the cross-examination were rebuttal in nature. The defense counsel had an opportunity to re-direct the defendant and did so, I don't think that it is necessary now or I think good practice to accept affidavits of that nature.

THE PRESIDENT: Counsel, when defendant Brack was under cross-examination and these documents were called to his attention, you had ample opportunity in re-direct examination of the defendant Brack to cover these documents. What is the necessity for future documents now?

DR. FROESCHMANN: I did that in the re-direct examination, too. I put a number of questions to the Defendant Brack, which referred to these documents. Two of these documents were these documents that referred to the fact that Brack with some, Watzel, in October of 1941, negotiated regarding the extermination of the Jews; that is the allegation. On the basis of the documents then put in, I have in the meantime put forth considerable efforts to find where Watzel was at this time. I even asked the prosecution to make the radio available to us, so that I should have that opportunity to find this Antagericht-erat Watzel and get in touch with him. I personally went to various camps in which internees were shown to me whose names were Watzel, but I did not find that man. I believe, therefore, that it is Brack's right, in view of all that I found out in the meantime, to make supplemental explanations - and these are only supplemental explanations - in that documents. I consequently ask that these documents 63 and 64 be accepted in evidence.

MR. HARDY: Your Honor, I don't see the necessity for the admission of this evidence. It is very apparent that Brack is now executing an affidavit in rebuttal to the documents, which were presented to him in cross-examination. I think we have taken ample time of the Tribunal in direct, and re-direct cross-examination. I also believe that the charges against Brack are perfectly obvious and he is not like some of

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the other defendants, having eight or nine charges against him. He has a minimum number of charges, namely Euthanasia and Sterilization, they were presented and amply covered during cross-examination and re-direct examination. This would now give a chance for the defense to open rebuttal evidence.

THE PRESIDENT: It would seem that the defendant Brack had ample opportunity to discuss these documents. Neither the defense or the prosecution can keep on indefinitely presenting evidence when he has ample opportunity to rebut them. These documents will not be received in evidence. The objection is sustained.

MR. HARDY: It is my suggestion that inasmuch as these documents are not admitted into evidence that the Translation Department will be given notice that Documents Brack Nos. 63 and 64 are not being received in evidence. This will save them that much difficulty down below.

THE PRESIDENT: Very well, if you can send that word to the Translating Department.

DR. FROESCHMANN: I can quite understand the ruling of the Tribunal to the extent that it applies to documents presented during cross-examination, but these documents were put in last Saturday. Brack had not had opportunity to answer them.

MR. HARDY: Your Honor, the documents put in last Saturday again were clearly rebuttal. The defendant Brack was the last one to take the stand on Euthanasia and since then no other affidavits or no other witness were presented concerning the question of Euthanasia since he left the stand. The other was rebuttal evidence. It seems to me that the defense counsel is not aware of the theory of rebuttal evidence.

THE PRESIDENT: Documents and all evidence of this nature might be admitted for the purpose of attacking the credibility of a witness or of a document, but insofar as it concerns rebuttal evidence which the defendant had an ample opportunity to introduce, it is not admissible. The Tribunal not having the documents before it is somewhat

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under a handicap, but from the explanation made it does not appear that these documents are admissible.

DR. FROESCHLANK: Document No. 60 will be Exhibit 52. This affidavit by Tussling concerns Brack's activities in having prisoner's released for Christmas, Hitler's birthday, etc., from concentration camps. I just received this a couple of days ago. This is Brack Exhibit No. 52.

My next to last document will be document No. 61. This is an affidavit by Charlotte Brack, who is a distant relative of the defendant Brack, in which also the fact is confirmed that the Defendant Brack in October of 1941 was on a vacation. This is Brack Exhibit No. 53.

And my last document is a No. 62. In the document in which Brack is accused of participating in the extermination of Jews by having a conference with Amtagerichter Wetzol, the prosecution has reportedly said that Brack sent his Chief, Kallmeyer, to Riga or somewhere on the Baltic Coast. I have succeeded in getting an affidavit from Dr. Kallmeyer. That is the last I should like to read into the record because it is very brief and proves definitely that the defendant did not do what he is accused of by the Prosecution.

Kallmeyer says, "Neither in the autumn of 1941 or at any other time was he ever in Riga or the Baltic region. Brack never spoke about sending me to Riga in order to get the necessary data and apparatus."

Secondly, I knew neither Amtagerichter Wetzol from the former Reichs Ministry of the Occupied eastern territory or the SS Polizeifuehrer for the Ostland. I know nothing of any request that he was to be sent into that region." The affidavit is dated 20 June 1947, signed by Kallmeyer and certified by the notary in Kiel. That is Exhibit No. 54.

MR. HARDY: I request that defense counsel take the affidavit of Kallmeyer and tell us for the purpose of the record the present address

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of Kallmeyer. The prosecution wants his address, will you read into the record the present address of the witness Kallmeyer?

DR. FROESCHMANN: The address is Huettner/Kienborstel.

MR. HARDY: Where is that?

DR. FROESCHMANN: In Schleswig - Holstein.

MR. HARDY: Thank you.

DR. FROESCHMAN: This excluding the affidavit from Holst which the Tribunal promised to admit a few days ago, concludes my exhibits.

THE PRESIDENT: The exhibit will be admitted with the exception of the two against which the objection was sustained.

DR. SAUTER: (Sauter for Blome):

I have only one more document to put in for Blome, an affidavit by the defendant Blome dated 1 June 1941, correctly certified. It has not yet been translated but is in this process. This affidavit concerns itself with a document which the Prosecution put in on last Friday, namely the document in which a file note is contained, regarding a conference with business manager Dr. Haubold of the Foreign Department of the Reich Chamber of Physicians, and in some way or other this is supposed to incriminate the defendant Blome.

Of this Foreign Department of the Reich Chamber of Physicians there had never been any mention before last Friday in this trial; Dr. Blome has drawn up an affidavit to that effect and it is very brief. I quote....

MR. HARDY: Your Honor, I question the admissibility of this before he starts reading it inasmuch as the Prosecution has charged Dr. Blome with medical experimentation in general. Dr. Blome has denied any knowledge of medical experimentation and when examined by me on cross examination many, many weeks ago, emphatically denied any knowledge of these matters and this document which is introduced by the Prosecution in rebuttal clearly shows Professor Blome had some interest in the matter and had some knowledge, and in the eyes of the Prosecution is a perfectly proper rebuttal document.

DR. SAUTER: This point of view by the Prosecution in this very last moment in the taking of evidence makes a matter of principle of this whole business and I cannot understand how it is possible or permissible for the Prosecution on the last day or next to the last day of a trial that has lasted months to put in a whole lot of new documents with new charges and then say these are all rebuttal documents, and,

therefore, the defendant has no right nor occasion to make any statement regarding them. In this document which was put in last Friday a brand new assertion was contained, namely, the assertion that there was a Foreign Department in the Reich Chamber of Physicians, and this is the assertion that Blome was responsible for it in a criminal way, because we are dealing in this trial only with crimes. Now the Prosecution just states in a more or less stereotyped way this is not a charge against Dr. Blome, but obviously all of those documents are put in to incriminate the defendant, and it seems to me that justice demands that the defendant make new statements regarding these documents. These documents could have been put in months ago, as well as last Friday. We are not allowed to throw in such documents at the last moment, and consequently I don't think the Prosecution should have the right to put in whole volumes of documents to which we can make no objection; that would be unjust, and Mr. President, if that is considered to be just, we should leave this room with the feeling that the defendants were not given their full rights in this regard.

THE PRESIDENT: Counsel, was this document to which you refer put in by the Prosecution exhibited to the defendant Blome while on the stand by way of cross examination.

DR. SAUTER: No.

THE PRESIDENT: Well if this document which the Prosecution recently put in was not exhibited to the defendant Blome on cross examination, the Tribunal will receive the document now, offered by Defendant Blome.

DR. SAUTER: This affidavit by Blome makes a statement regarding the new charges that were made against him last Friday in a new document. He says, and I quote the affidavit. It is very short:

"From 1939 until 1943 I was Deputy Director of the Reich Chamber of Physicians, the chief of which was Dr. Conti, and in this capacity he bore the title 'Reich Physicians Leader'. Pursuant to the law it made up the Reich Chamber of Physicians of 13 December, 1940. The

representation of the Reich Physicians Leader was stipulated as follows:

"Paragraph 1, Section 1 reads as follows:

"The leader of the Reich Chamber of Physicians (The Reich Physicians Leader), looks after the interest of the Reich Chamber of Physicians and represents that chamber legally and otherwise. He has a permanent deputy. He can also authorize other persons to represent him in certain instances, or to watch after the interests of the chamber", that is the conclusion of that paragraph 21.

Blome continues:

"That among those people whom the Reich Physicians Leader gave the right of Deputy, among those who did not belong under the authority of the Reich Physicians Chamber of the Reich Physicians Leader was Dr. Haubold, leader of the Foreign Department. Others also, such as the director of the Financial Department and the Department for Medical Post Graduate Training and Press, were in the same category. I, according to orders from Dr. Conti had neither the right to give orders nor the right to supervise. I only saw Dr. Haubold, the leader of the Foreign Department only occasionally, perhaps every a quarter of a year. Dr. Haubold took care of this office at the same time as he had jobs outside the Reich Chamber of Physicians. In his capacity he was director under Dr. Conti, for example in the resettlement of Germans from Russia. In these other fields of work of Haubold, I had no insight at all, nor do I know anything about the financial matters of the foreign department. In this respect, on Conti's orders, this department was so independent that not even my referent for business matters had insight into these financial matters.

"The question whether Dr. Haubold ever discussed the value of the production of the typhus vaccine with me or the question of human typhus experiments I can only deny emphatically."

Nuremberg, 1 June 1947, (signed) Kurt Blome. This is Blome Document 27, and it will be Exhibit 25.

That concludes my defense, Your Honors.

DR. SERVATIUS (Dr. Servatius for Karl Brandt):

THE PRESIDENT: Well, Doctor, I do not believe the Tribunal has received the English documents for Karl Brandt.

DR. SERVATIUS: This is document 117, that I put in to the Translation Department two weeks ago and haven't yet received back. It is an elaborate and a most important document in my case.

THE PRESIDENT: My point merely was we have some English documents here for other defendants and we could more conveniently proceed with those of which we have the English translation and wait until the English translation of your document arrives.

DR. SERVATIUS: That could take days. I understood today was the last day.

THE PRESIDENT: Well, I understood the documents are coming in today, at different hours, from the translation department and in the order as they come in we would proceed with those which we already have in English. If today is not long enough to receive all of these documents an opportunity will be afforded you to put in the documents later, but we have some in English here and I thought we could proceed with those more advantageously.

DR. SERVATIUS: Then I shall wait.

THE PRESIDENT: The Tribunal has some documents on behalf of the defendant Krugowsky, I think, Book III. Has the Secretary any of these document books on behalf of the defendant Krugowsky?

THE SECRETARY: They are not here yet.

MR. HARDY: I do not have any Krugowsky books, Your Honor.

THE PRESIDENT: These were delivered to me this morning by the Translation Department.

MR. HARDY: Your Honor, is it possible that they delivered the copies to the Presiding Judge inasmuch as you know the order in which you wish them in order to present them?

THE PRESIDENT: None but these were delivered to me.

MR. HARDY: You don't happen to have a fifty copy so that one could be available to me, do you?

THE PRESIDENT: I have two copies of this book apparently. I think it mostly consists of the transcript taken from the evidence in the Fohl trial.

MR. HARDY: Does Dr. Fleming have an extra English copy?

MR. FLEMING: One of the books contains these excerpts from the Pohl trial. The other book contains affidavits.

THE PRESIDENT: I have a German Document Book, Supplement III for Krugowsky, but no English translation.

MR. FLEMING: Three contains the excerpts from the Pohl case, and Book II contains the affidavits.

MR. HARDY: In the case of Book III, there would not be any translation problem since already the English and German exist.

THE PRESIDENT: I'll hand Counsel this German Document Book III, Krugowsky.

MR. HARDY: The German will not help me much. If the English exists, I do not see why I could not have it now and then follow him more handily with the English. If he is introducing excerpts from the Pohl case, which are five excerpt and I can see that the Secretary General has certified them to be true copies, then I have no objections. I can read those later. But of the other Document Book, I would like to read the English. The only question with regard to those excerpts from the Pohl case, that is the trial downstairs, is whether or not they are certified by the Secretary General. If they are, there would not be any objection by me, and I can get the copies later.

THE PRESIDENT: I'll hand these to Counsel and he may examine them. They were handed to me just before the opening of Court. I had no opportunity to examine them.

MR. FLEMING: On 25 June, I gave these documents to the Secretary General with the request that they be certified. Whether the Tribunal already has them in certified form I do not know. At least, they are all mimeographed copies.

THE PRESIDENT: The Translation Department informs me that those were turned over by Counsel for Krugowsky only last Friday, on June 27.

MR. HARDY: In this case of Document Book III, there actually was not any necessity of turning it over to the Translation Department.

All you have to do is request 15 copies of the German transcript, the pages that you need, 15 copies of the English transcript, take the copy to the Secretary General and have it certified and submit it to Major Hatfield as an exhibit. He does not have the exhibit, and he does not have the English; and that is something that should not go to the Translation Department.

THE PRESIDENT: That should not have gone to the Translation Department, except that I assumed that it was accompanied by certain affidavits.

MR. HARDY: That is another book.

THE PRESIDENT: Are those copies certified?

MR. FLEMING: Mr. President, I did not send this Document Book to the Translation Department. I sent it right to the Secretary General and asked him to certify it, because there are already English translations of those passages from the original transcript. On 25 July I gave them to the Secretary General to be certified.

THE PRESIDENT: In some mysterious way it appears to have landed on the Translation Department, but, of course, it should not have taken any of their time, since only certified copies of the transcript before another Tribunal were required.

MR. HARDY: These two volumes you have handed me, Your Honor, are merely certified copies of somebody's transcript file, which I will hand back to you.

THE PRESIDENT: Just keep them. It will be possible to have them certified by the Secretary General.

MR. HARDY: These apparently belong to somebody's completed file. They may possibly be from your file.

THE PRESIDENT: They were handed to me by the Translation Department directly. I noticed that, but I —

MR. HARDY: I'll return them to the Translation Department.

THE PRESIDENT: Well, no, just return them to me. They delivered them

We then have no English translation of Mrugowsky Document Book III.

MR. FLEMING: The translation of Book II is not ready either, I assume—Supplementary Book II.

THE PRESIDENT: Apparently it has not been received. Are there any other completed Document Books that have been turned over to the Secretary of the Tribunal?

MR. FLEMING: The translation Department has had them since last week, and yesterday—

THE PRESIDENT: Since last Friday, Doctor.

MR. FLEMING: Since Thursday or Friday, yes, and the Chief of the Translation Department said yesterday that they would be ready today, so perhaps I can postpone my presentation until the translation is here.

THE PRESIDENT: We will wait a few minutes, Doctor. You may resume then.

MR. HARDY: Your Honor, I just received Prosecution Rebuttal Document Book 19. I can proceed with that in a few moments if I get the other copies.

THE PRESIDENT: Very well, Counsel.

MR. HARDY: I'll have to wait until I receive the German copies for the German Counsel to follow me, Your Honor.

THE PRESIDENT: While the Tribunal is in recess, will Counsel—

MR. HARDY: It could well be that I could take up the introduction of these in the same manner that Defense Counsel have in that I put in the English of Rebuttal Document Book 19 and complete that. I don't believe there will be any objection to some of these. However, I will have to get the original of the exhibits. If there are any of the other Defense Counsel that have document books ready to put in, then I could get those well arranged and put them in a more systematic manner.

THE PRESIDENT: Have any Defense Counsel any document books that are ready to be presented? How many Defense Counsel have further document books to offer?

(Show of hands by Defense Counsel)

THE PRESIDENT: Six- During the morning recess will Counsel for defendant Krugowsky take up with the Secretary General the matter of the certification of these extracts from the Pohl trial that he desires to introduce in evidence. The matter will be taken up with the Translation Department to ascertain what is available from there.

MR. HARRY: Your Honor, I am informed that the German copies of the Rebuttal Document Book are not ready. I'll not be ready to proceed with those. The transcript of the interrogation of the defendant Hoven was in English. That had to be translated into German. They have not got the German document book together yet.

DR. FROESCHLANN (For defendant Brack): The ruling of the Tribunal on the application by my colleague Sauter makes me believe that perhaps the Tribunal misunderstood me. I cannot talk as loudly as my colleague Dr. Sauter, so perhaps I did not make myself so clear.

The other affidavit that I wanted to put in for my client contained four short statements regarding four documents put in on Saturday, in which Brack is accused outright of crimes against humanity, and these are now crimes insofar as he is accused of having participated in the extermination of Jews. In one document it is said that a mentally ill person died in Lublin, there was the statement that there was a euthanasia station in Lublin and that in this euthanasia station this Jewish woman was killed, this is a man claim.

THE PRESIDENT: Counsel, I understood from you that these documents that you were offering on behalf of the defendant Brack were in refutation of documents which had been exhibited to defendant Brack while he was on the witness stand and which were then marked for identification and were later introduced in evidence by the Prosecution. Is that correct?

DR. FROESCHLANN: No, your Honor. The first Brack affidavit was to refer to the document put to Brack during cross examination, and this the Tribunal rejected. Then Saturday Hochwald for the Prosecution

put in new documents which had not been put to Brack during his cross examination, in which these assertions are made--namely, that in the Lublin matter that I just mention, he helped kill a Jewish insane woman secondly, that in 1942 at a conference of the Reich Ministry of Justice he delivered a lecture which Brack also has not been able to make a statement about because this was not put to him before; thirdly, a document was put in by Becker.

THE PRESIDENT: I do not remember that Dr. Hochwald introduced any new documents. I might be wrong. I thought he was merely explaining documents which had heretofore been submitted as Exhibits for the Prosecution.

MR. HARDY: Your Honor, Defense Counsel has stated that these are new charges. I wish to call Your Honors' attention to the Indictment. In the Indictment --

THE PRESIDENT: Counsel, the question is not altogether as simple as that. As to documents which were exhibited to the defendants in the course of cross examination and were marked as Prosecution Identification, the defendant then had a full opportunity to answer those documents on re-direct examination. If other documents were offered later which were not exhibited to the defendant while the defendant was on the stand or offered by way of rebuttal, and very properly, the Tribunal is disposed to allow the defendant to deny those affidavits if they had not been called to the defendant's attention while the defendant was on the stand. That was the occasion of the ruling on the document offered by Dr. Genter.

MR. HARDY: Well, Your Honor, suppose the situation be this - that we withdraw all the rebuttal documents and put them in when defense has completed the case.

DR. FROESCHMANN: Then I may assume that this second affidavit of mine may be put in and accepted in evidence because reference to the document was not put to Brack's attention during the time he was here on the stand.

MR. HARDY: Prosecution requests, your Honor, that the Tribunal peruse the documents we put in rebuttal in connection with the Euthanasia case to see whether or not they are rebuttal evidence. Prosecution contends they are. Therefore they are not admissible.

THE PRESIDENT: If they were exclusively rebuttal evidence and brought in no new matters they should not now be denied.

MR. HARDY: The only question is that Dr. Froeschmann is trying to bring up that we did not charge Brack with extermination of the Jews. We specifically charged him with extermination of the Jews in the Indictment. The theory of the Euthanasia case was that Euthanasia was and eventually existed in the extermination of the Jews as outlined in the Indictment. He has known from the first day he received it. It is nothing new, your Honor.

DR. FROESCHMANN: If the Prosecution now states that Brack is not being charged with participating in the extermination of the Jews, then it is clear that I do not have to do any refuting here. But Hochwald explicitly stated last Saturday that Brack was charged in participating in extermination of the Jews and I consider it my duty as defense counsel to give my client the opportunity to make statements about these new charges or documents from the Prosecution.

THE PRESIDENT: It seems clear counsel that the charge was in there against the defendant Brack in all stages of the proceedings including the indictment and when Brack took the stand in his own behalf he had the opportunity to give full testimony concerning the charges given in the Indictment.

DR. FROESCHMANN: Yes, but these are new documents, your Honor - Document NO-3356, Exhibit 552.

THE PRESIDENT: These documents, counsel, according to the Prosecution, I have not read them recently, are simply in rebuttal to evidence of defendant Brack. He had a full opportunity to testify. Prosecution presents further evidence to the effect that the testimony of Defendant Brack is incorrect. They have that right in offering rebuttal evidence. Brack on the stand had the opportunity to tell his story. Prosecution on rebuttal has the right to show his story is incorrect. That cannot be carried on indefinitely by then denying what Brack had the right to testify to when he was on the stand.

DR. FROESCHMANN: In my opinion these documents are not rebuttal evidence but are brand new statements, brand new material.

THE PRESIDENT: They are entitled to do that, of course, on rebuttal to bring in any evidence in rebuttal. That is the purpose of rebuttal evidence - to bring in any evidence which tends to prove that the evidence by the defendant on the stand was incorrect.

DR. FROESCHMANN: Well, but then the defense ought to have a chance to state his opinion about this new evidence because it might be an obvious error. How am I going to have a chance to refer in my brief to that which might be wrong. I fully agree here with Dr. Sauter.

MR. HARDY: Your Honor/ isn't it my understanding in rebuttal evidence that if we introduce any new evidence that the Tribunal will exclude new evidence in judgment. If we have offered any new documents they are clearly inadmissible and if one of the documents would be a new factor it seems to me they would merely ignore it, because the Tribunal won't pay any attention to new evidence any way.

THE PRESIDENT: On rebuttal, as stated by Prosecution Prosecution must limit evidence to rebuttal, refuting evidence by the defense, if there is new material in it the Tribunal is justified in ignoring it. Counsel in his brief may call attention to the fact that it is not proper rebuttal evidence and should be ignored. If there is such evidence.

The Tribunal will now be in recess and we will see what can be done to clear up these documents.

THE MARSHAL: The Tribunal is again in session.

MR. HARRY: May it please the Tribunal, Dr. Servatius has four or five or six documents that I think he can put in now in the German language. At the completion of that, Dr. Tipp has two documents that he can put in in the German language. I believe that Dr. Seidl has one; Rudolf Brandt has another, and I think Poppendick one, and Hoven one, and Beiglboeck one. I think those can all be handled now.

DR. HOFFMAN (Counsel for defendant Pokorny): Mr. President, last Friday I finished my submission on behalf of the defendant Pokorny. The Tribunal permitted me to submit another two affidavits, one affidavit by the defendant and one by the witness Dr. Jung. In the record it is expressly stated that I was permitted to submit those affidavits as soon as they are ready. This was the statement made by the President.

Today I have these two affidavits and I tried to submit them to the Translation Department. I was told there that they could not be accepted anymore. In addition, all the documents which have been submitted since Monday were sent back with the notation that they could no longer be translated. I should like the Tribunal to rule in my special case that these two documents be accepted for translation and equally that all the documents that have been submitted this week should also be translated.

In my case I would not have been able even at the best to get these documents ready any faster. I think that originally the Tribunal gave us time until today or even until the 3rd of July to submit the documents to the Translating Division. I feel that we are here concerned with a misunderstanding of the Translating Division.

THE PRESIDENT: I remember the ruling of the Tribunal was that these documents might be offered up through today and possibly tomorrow, but that did not mean that they would be accepted after that. The counsel may present this matter this afternoon. We will now proceed with hearing Dr. Servatius and the documents he has to offer.

MR. HARRY: In regard to Pokorny's case, the Tribunal did grant permission to the defense counsel to submit an affidavit from Pokorny

himself. I think we could take these two later in German, and in the period of the week's recess and so forth they could eventually get to the Tribunal before you set out to write your judgment.

THE PRESIDENT: The defendant Pokorny having been the last defendant to testify, naturally his documents were delayed. If it is stated by the counsel for the prosecution that he agrees, these may be offered in German this afternoon.

MR. HARDY: Fine, Your Honor.

THE PRESIDENT: We shall hear from Dr. Servatius, counsel for Karl Brandt.

DR. SERVATIUS (Counsel for defendant Karl Brandt): Mr. President, I offer now the Document KB-119 as Exhibit 102. This is an official document of the Fuehrer, Adolf Hitler, in which Karl Brandt receives a special assignment in his capacity as General Commissioner for the Health and Medical Services. It tends to illustrate his position as it was. The document is not yet translated; it is very short and I shall read it into the record:

"Fuehrer Headquarters, 26 October 1942.

"The care for the wounded demands an evacuation of the hospital bases. Therefore, the interests of all military and civilian agencies have to withdraw. I commission the Chief of the Wehrmacht Medical Services with the building of these new hospital bases and also the General Quartermaster of the Army. The Chief of the Wehrmacht Medical Services and the General Quartermaster of the Army will receive the necessary authorization in connection with my General Commissioner for Health and Medical Services. (Signed) Adolf Hitler"

MR. HARDY: Will Dr. Servatius kindly make a statement regarding the authenticity of this document? That is, where the document came from, and so forth, for the record.

DR. SERVATIUS: I received this document from my colleague Dr. Nelte, who in turn has received it from Handloser. I have a photostatic copy before me and I have no doubt as to the authenticity of the signature.

MR. HARDY: Is this the original signature?

DR. SERVATIUS: I have never had the original in my hands.

MR. HARDY: That is supposed to be Adolf Hitler?

DR. SERVATIUS: Yes, that is supposed to be Adolf Hitler.

MR. HARDY: I recognize the signature as being that of Hitler. I think the document is authentic, and if defense counsel will make the statement that it was received from Professor Handloser and that Handloser had had it in his possession as an official document, that will meet the qualifications of the Court. He can make a certification to this on a later date, just to assure us of the authenticity for the Court record. I won't object.

DR. SERVATIUS: I will submit a statement of that nature.

MR. HARDY: The statement need only be in the English language - just a brief statement as to its authenticity.

THE PRESIDENT: What exhibit number will that bear for Karl Brandt?

DR. SERVATIUS: This will receive the exhibit number 102.

MR. HARDY: It is my understanding that this is in the translation bill and we'll have English copies in due time.

THE PRESIDENT: Dr. Servatius has stated that it apparently went into the translation two weeks ago.

DR. SERVATIUS: Yes, it was submitted for translation.

I now submit Karl Brandt Document 117. It is a compilation of experiments taken from a scientific lecture dated the year 1937, entitled "Infectious Experimentation on Human Beings". The document was submitted to the Translating Division two weeks ago but is not yet available. I should like to ask your permission to submit it in the German language and the translations will arrive later.

DR. SERVATIUS: (Continued) It is a summation of a number of experiments to which I shall refer in my final plea. In particular it refers to the question of the voluntary nature of the subjects.

The next document will be KR-131. These are a few pages from a document which was already submitted by the Prosecution as Exhibit No. 512. This came from the "Philippine Journal of Science," including the experiments of Strong. I have here the cover and the pages 171 and pages 377 to 379 which have been photostated by me. It concerns the death case which arose during the experiments and I submit this document in supplementation of what the Prosecution has already offered.

MR. BARRY: May your Honors please, the original document is in the English language.

DR. SERVATIUS: I don't know whether the Tribunal has the entire article before it. I have the original book here from the University of Munich and I should like to hand it to the Tribunal so that it may take official notice of it although they would have to return it at a later date. I consider it important that the Tribunal get a picture about these experiments and will see how such experiments were carried through, how voluntary subjects were obtained, and what circumstances played a part. I ask the Tribunal to accept the original document and hand it back when they are finished.

THE PRESIDENT: We have four pages of photostats. Does that cover the entire document or not?

DR. SERVATIUS: No, the document itself has 130 pages and could not be copied. I merely want to hand it to the Tribunal so that they may gain insight and gain a general opinion about the experiments. Prosecution has presented part, the expert Ivy referred to it, and I think it expedient if the Tribunal would get an insight into the document.

THE PRESIDENT: The volume may be deposited in the office of the Secretary General to be available to the Tribunal.

DR. SERVATIUS: The last document will receive Exhibit No. 104.

The following document EB 129 is offered as Exhibit 105. It is an affidavit signed by the witness Wesse. This witness had been approved by me for the purpose of cross examination. In agreement with Prosecution and in the presence of a representative of Prosecution, I interrogated this witness and I have laid down his testimony in the form of an affidavit. The documentation division has not translated that document and with the approval of the Tribunal I would read it into the record. The document has about three pages.

THE PRESIDENT: Has counsel for Prosecution examined the document?

MR. HARDY: The document is in order, your Honor. It has the affiant's signature on it. And, if I recall the Tribunal gave permission to call the witness for cross examination purposes. Dr. Servatius chose to get an affidavit and did interrogate the witness in the presence of Prosecution and this is his affidavit. I think this should be admitted. As to the translation problem and completing it. I think it could be read into the record but that wouldn't make an available copy for Prosecution, so he could read the pertinent parts, or....

THE PRESIDENT: The document will be translated into the English by the Translation Division.

MR. HARDY: I think that is all that will be necessary.

THE PRESIDENT: Counsel may proceed.

DR. SERVATIUS: Mr. President, then the Translation Division must be told to carry out that translation because they returned the document to me.

THE PRESIDENT: When did you deliver the document to the Translation Department.

DR. SERVATIUS: Two days ago, on Monday, after I had interrogated the witness. I didn't have the witness available before that time.

THE PRESIDENT: The Translation Department will be instructed to translate the document.

DR. SERVATIUS: Mr. President with reference to the contents of this document I may state that the witness talks about the Reich Committee and about Euthanasia of children. He discusses the procedure which was used there, the type of children used. In particular he speaks about his knowledge of Professor Brandt's activities. He says that he didn't know Brandt, had never seen him nor anything in writing about him - only told that Brandt was the leading personality in that respect.

The next document, your Honor, will be KB 130. I offer this document as Exhibit 106. It is an affidavit signed by a certain Dr. Wilhelm Rosenau. Mr. President, I have interrogated this witness yesterday and he made this affidavit for me. He was a witness before Tribunal III in Case III, the trial of the Judges. He was heard there regarding the question of sterilization. Here he testified as to Euthanasia. I consider him to be a very important witness who unfortunately only appeared toward the end of the proceedings. I did not know him before. He is a Jew in this case of the Nurnberg Laws and was the head of the Mental Institute near the Rhine in Sein where all the Jews who were insane had been concentrated for purposes of cure. He states that questionnaires were sent to him but that the questions contained in the questionnaire with reference to Jews and other points were put in there for purposes of camouflage. He further says that Jews concentrated in his mental institution were not transported away and stayed there until the end of the War. Towards the end of the War, the Gestapo sent them away, but they were not sent away within the Euthanasia procedure. The statement is not very long and perhaps I can be permitted to read it into the record.

THE PRESIDENT: What bearing does that affidavit have upon the case of Karl Brandt?

MR. SERVATIUS: The affidavit concerns the questionnaires. The Prosecution charged Karl Brandt that he knew about the questionnaires and possibly helped in the drafting of these forms. He was charged that Jews were mentioned in the questionnaires with the obvious intention of leading them into Buchenwald, you will remember that the defense of the defendants maintained that a number of points are contained in the questionnaires which have nothing at all to do with Buchenwald but merely served the purpose of camouflage to conceal the mere matter of the intention. This, of course, was a statement which could be met with certain amount of suspicion, but now here we have a Jew, the head of a Mental Institute, who confirms that fact. Furthermore, it has been charged that the Jews were actually transferred and Karl Brandt, as the head of the Buchenwald procedure, is held to account. Here this head of the Jewish institute says that they were not actually transferred, except for a few cases. I should like to read this statement into the record.

THE PRESIDENT: When did you turn that document into the Translation Department?

MR. SERVATIUS: I only received it last night. I tried to give it to the Translation Department this morning but they returned it to me. However, I do think that its contents are so essential as to give us a completely different picture about the question of the Jews that what we have already. Mr. President, perhaps you will remember the testimony of the Defendant Brack who stated Jews were to be exempted from the Buchenwald because that act of grace it was only to be given to Germans. That was, of course, a strange statement but it must be surprising now if here the head of a Jewish Institute confirms the fact "That was too good for them, they were saved for something worse." Only the

Gestapo wanted to deal with them. Such a noble procedure was too good for them, and here you find the head of a Jewish institute saying that. I think this is of considerable significance for the case of Karl Brandt who had nothing to do with the Gestapo and who, as he maintains, intends to carry through the Euthanasia act in medical practice and orderly fashion.

THE PRESIDENT: Of course, new witnesses might be coming in now for the rest of the month. It must come to an end to the time when new evidence will be introduced. Has counsel for Prosecution examined this record?

MR. HARDY: I have examined it. The document has a jurate on it. As to its admissibility, I can see some merit in Dr. Servatius statement. But it is just an affidavit from the head of one institute and may not have any probative value. It is up to the Tribunal to decide that. I think he is a little late in introducing it.

DR. SERVATIUS: Mr. President, a dead line has been set. I think this is the limit of the dead line and I have still arrived in time. I might add, if the witness only appeared three days later I might have been able to submit it sooner. I still came in time.

MR. HARDY: The solution is to have Dr. Servatius translate it himself. He is capable of doing so and can have it certified and put it in.

THE PRESIDENT: Very well, that may be done.

DR. SERVATIUS: Would you like me to read it into the record or shall I submit it later?

THE PRESIDENT: Counsel may read the document into the record now.

DR. SERVATIUS: I quote: "I, Dr. Wilhelm Rosenau, official physician in Dietz/Treile Unterlahn, have been told that I shall make myself subject to punishment if I make a false affidavit.

2 July 47 MFC-11-5 Gross (Zanler)
Court I

I state in lieu of oath that my statements correspond to the
truth and are being made for Military Tribunal I, Palace of
Justice, Nurnberg.

"From the year 1940 until 1942 I was head of the Mental Institution Sein of the Reich Association of Jews in Germany. And approximately at the end of 1940 all insane Jews who were in need of being cared for in an asylum were transferred. Other institutions were not allowed to accept Jews and keep them there. The Institution Sein had to fill out the questionnaires for the euthanasia procedure, and the sterilization, in the same way as all other institutions. The questionnaire contained a number of questions which we did not feel to be consistent and we agreed that part of these questions served purposes of camouflaging of the original intention of euthanasia. The questions regarding "Jews" we considered to be irrelevant in that connection. On the basis of these questionnaires no Jews at all were called from our asylum. Two or three Jews who were given care from the outside had to be transported to Eglfing-Heer, and we had heard nothing from them after that time. Since it has been told to me that defendant Brack on the witness stand has stated that euthanasia was not to be granted to Jews since it constituted an act of grace from which only the Germans were to benefit, I can state that this was entirely our opinion, too - that is to say, the opinion of the then responsible heads of the Jewish agencies, and also my opinion. I have stated this fact some time ago when testifying before the French Surete. The patients of our asylum, after they had been cured, were transferred from their home place to Poland by the Gestapo, as they were not able, as was the case of a few of them, to get passports and emigrate. The rest of the patients as from the 14 March 1942 were transferred to Poland in general large scale Jewish transports, to Poland, together with the personnel of the institution, where they disappeared. In the case of only the Jews who were in so-called privileged mixed marriages, and in the case of Jews of foreign nationality, were not transferred directly to Poland, but stayed there until very late, and were then sent to Berlin, where the Jewish hospital at first had instituted a special department for them. From there they were sent to Theresienstadt. I know that recently three of them were

still alive. I have personally seen this special department in Berlin, Nuernberg, 1 July 1947." (Signature) Wilhelm Rosenau, and following the certification.

MR. HARDY: May I ask a few questions of Dr. Servatius concerning this field, Your Honor.

THE PRESIDENT: Yes.

MR. HARDY: Was this affiant a Jew himself, Dr. Servatius? Is the affiant a Jewish person?

DR. SERVATIUS: Yes, he testified before Tribunal No. III in the case of the judges and said he was a Jew, in the sense of the Nuernberg laws. He reiterated that yesterday.

MR. HARDY: He was retained as chief of the asylum in Germany during the war?

DR. SERVATIUS: Yes, there was a Reich Association of Jews who enjoyed certain rights, among others the administering of this institution. I think it may be expedient to refer to his testimony before Tribunal No. III.

MR. HARDY: Was this Jew, who was a Jew, according to Nuernberg laws, a member of the Nazi party?

DR. SERVATIUS: I asked him yesterday whether he belonged to the SS, SA, or Party and he said "no".

MR. HARDY: No further questions, Your Honor.

THE PRESIDENT: Does this conclude the list of the documents counsel desired to offer in evidence?

DR. SERVATIUS: Yes, this concludes my case on behalf of Karl Brandt.

MR. HARDY: Concerning this affiant, do you mean he was married to a Jew or is half Jewish or some such situation as that? He isn't a full-blooded Jew?

DR. SERVATIUS: Mr. President, I haven't asked him about this delicate subject. I am sure the prosecution before Tribunal III has dealt with this question in great detail, and you will be able to look it up.

MR. HARDY: That will not be necessary.

THE PRESIDENT: Is counsel for Rudolf Brandt present?

DR. WEISGERBER: Counsel representing Dr. Kaufmann, representative of defense counsel Brandt.

As counsel on behalf of Rudolf Brandt there are two documents which I wish to submit; one is an affidavit executed by Gustav Schoening, residing in Teltow, who makes a statement regarding Rudolf Brandt's personality. The affiant is an old social democrat and states that is the reason he is thus qualified to make a statement on this question. This document is offered by me as Rudolf Brandt Exhibit 20.

The next document Rudolf Brandt No. 21, which I offer as Rudolf Brandt Exhibit 21, which is an affidavit of Frau Erna Brosig, nee Ladewig. This statement also is a statement concerning the defendant Rudolf Brandt's personality.

This concludes the submission of evidence on behalf of the defendant Dr. Rudolf Brandt.

THE PRESIDENT: Very well, counsel. I will ask counsel for the defendant Krugowsky how many documents he is proposing to offer?

MR. HARDY: I think Dr. Seidl has one document he could put in quickly.

THE PRESIDENT: Very well. We will hear from Dr. Seidl.

DR. SEIDL: Counsel for defendant Karl Gebhardt.

Mr. President, I ask to submit the document which I was approved to submit at a later date last Saturday. We are concerned with an affidavit executed by Dr. Karl Gebhardt, which is Document No. Karl Gebhardt 47, and I submit it as Exhibit No. 45.

THE PRESIDENT: No copies in English of this document are available to the Tribunal, as far as I know.

DR. SEIDL: Last Monday I handed the copies to the translating division. Apparently they have not yet been translated. I ask for your permission to submit the original now and hand the translations to the Tribunal when and if they are finished.

MR. HARDY: This is the document, Your Honor, in answer to the

prosecution affidavit of one Fritz Suhren, which the prosecution offered in rebuttal on Saturday. It is an affidavit by the defendant Gebhardt himself. I think we discussed that earlier this week one time. I am confused; I forgot the ruling of the Tribunal on this particular document at that time.

THE PRESIDENT: Without the translation or knowing anything about the document the Tribunal cannot determine whether it is admissible under the rules or not.

MR. HARDY: I think Dr. Seidl purports that this affidavit is in answer to the affidavit that the prosecution submitted, which is dated in April 1946 given by Fritz Suhren, the former commandant of concentration camp Ravensbruck, and in this affidavit it is pointed out Fritz Suhren had knowledge concerning the activity of Gebhardt at the camp and the status of the girls. It was my opinion when arguing this once before that the affidavit of Suhren was in rebuttal, attempting to rebuttal Gebhardt's examination. Dr. Seidl wishes now to offer this affidavit of Gebhardt as sur-rebuttal.

THE PRESIDENT: This will be received in evidence.

DR. SEIDL: This will be Gebhardt Exhibit 45. If the Tribunal wishes, I can submit four copies in the German language until such time as the English translations are available.

THE PRESIDENT: Very well. You may do so.

MR. HARDY: I think defense counsel for Poppendick has another affidavit, or you may wish to adjourn at this time.

THE PRESIDENT: It may be submitted when the Tribunal reconvenes at 1:30.

I would ask Dr. Fleming, counsel for Poppendick, how many affidavits he proposes to offer, outside of this transcript from Tribunal No. II; all that is necessary to offer with that is a certificate from the Secretary General. Outside of that I understand you have five documents?

DR. FLEMING: Mr. President, in addition to the documents which

are being certified by the General Secretary, I have another 20 documents. I would suggest I hand the originals to Mr. Hardy, which would enable him to look at them with the assistance of his German speaking assistants, and that I would be permitted to submit them to the Tribunal after recess.

THE PRESIDENT: We have Document Book III by Mrugowsky.

DR. FLEMING: These are the excerpts from the Pohl record. The other documents, the other affidavits, which I submit, are in Supplement II.

THE PRESIDENT: I have here a "Table of Contents of Supplement III" by Mrugowsky, evidently what appeared by the statement of the prosecution's witness Kogon.

DR. FLEMING: Yes, these are the testimonies of Kogon in the Pohl tribunal. Supplemental Volume 2 is also the other one I intend to offer.

MR. HARDY: Supplement 2 is the one Mr. Hodges said we would get today. I think we could hold up on Dr. Fleming and I think we will get the English today.

THE PRESIDENT: The Tribunal will be in recess until 1:30.

(Thereupon a recess was taken.)

1947

2 July-A-13-1-ABC-Meehan (Brown)

AFTERNOON SESSION.

(The hearing reconvened at 1330 hours, 2 July 1947)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: There will be filed with the Secretary-General the excuse from the prison physician on the absence of the defendant Herta Oberlander, who is ill.

DR. TIFF: (Defense counsel for the defendant Becker-Freysong.)
Mr. President, I have two documents for Becker-Freysong, which I have still to put in. Becker-Freysong document 80, which was Exhibit 65. This is an affidavit from Dr. Max Matthes dated 25 June 1947. This document I received only yesterday for translation, but do not know if it is translated; however, I should like to read some of the important parts into the record. The document is not very long, the important passages do not embrace more than two pages. I think it would be best if we had it read into the record now.

MR. HARDY: It is a little late, Your Honor, for this document.

DR. TIFF: That is not our fault, Your Honor, but the fault of the bad postal connections between Nurnberg and Bonn. We asked for it a long time ago, but only yesterday did we receive it.

THE PRESIDENT: Proceed.

DR. TIFF: "The affiant Max Matthes, Bonn, Kaiser Friedrich Strasse, after the importance of this affidavit and punishability of bearing false witness has been brought to his attention, signs the following affidavit to be put in as evidence before the Military Tribunal No. 1 in Nurnberg: I. Regarding the Person"

I may skip the first few sentences and I shall begin about two-thirds of the way down:

"At the beginning of March of 1943 I, as chief medical officer was appointed Sea Emergency Service Leader 5 (North) in Oslo, after I had prepared myself for this post by working on the documents on sea emergency service (draft of the conference report, sea emergency experience reports, etc.) which Professor Dr. Anthony and Dr. Becker-

Court 1.

2 July 4-13-2-ABG-Kochan (Brown)

Froysing put at my disposal. At the end of March, 1944, I was transferred in the same capacity to the main center of gravity for sea emergency service, namely the Black Sea. After the Baltic retreat I was appointed as the Navy Training Director for the medical personnel the Navy Personnel School of the Luftwaffe, Lobbe at Raugen."

The other sentences in this part are not important. I now turn to No. 2. Regarding the facts:

"1 - In the conference on medical problems in sea emergency and winter distress of October, 1942, which took place in Hamburg, I did not take part. The contents of the lectures delivered there became known to me only later through reading the printed reports on the conference, which were distributed in 1943 and in which the scientific grounds for the theory of rapid rewarming were given. So far as I have discussed this theme with medical officers and troops officers in the sea emergency service, they never mentioned any alleged unpalatable human experiments and did not even hint at them."

"2 - Rapid rewarming had already been introduced when I was transferred to the sea emergency service at the beginning of March 1943. This included: a) a special memorandum, which was distributed in the summer of 1943 to the troops and was to replace the memorandum of August 1942 in the soldiers' book of the Luftwaffe soldiers in the Northern and Eastern area; b) instructions for handling cases of severe cooling which occurred in ships and boats, as well as in the emergency airplanes of the Luftwaffe, and which also replaced previous instructions in which slow rewarming was ordered; c) 'Instructions for Troop Physicians', distributed by the Inspector or Chief of the Medical Service of the Luftwaffe. It was distributed to the troop doctors in Norway in the summer of 1943."

"3 - The German Navy also, on the example of the Luftwaffe, introduced the method of rewarming persons who had been severely cooled."

Court 1.

2 July-A-13-3-ABG-Moehan (Brown)

I can skip the next sentences. I go now to No. 4.

4. - In order to carry out rapid rearming, the following technical means were issued in the sea emergency service:

(a) In the ship hospitals of the rescue ships, hot baths were installed. (When I arrived in Norway this reconstruction had to a large part been.) Moreover, there were electrical heating rooms used there.

(b) In the emergency rescue boats, the radiator water, which was 45 degrees centigrade, was piped to a shower room.

(c) In the emergency rescue airplanes there were two electrically heated sleeping bags, which were heated up to 40 degrees centigrade.

(d) Efforts were made in all emergency rescue stations on land to have boats and air-planes and hot bathing arrangements available in the immediate neighborhood of where the ships landed. Where no other means were available, electrically heated bags were used.

" 5. During my activity in the emergency sea service I frequently applied this method of rapid rewarming. I never observed fatalities or serious or lasting injuries to the body. On the contrary, when a troop transport sank in the Black Sea I experienced this catastrophe, where we did not have the necessary equipment for rapidly rewarming those who had been frozen and where the immediate transport to hospitals was not possible in all cases; and in the cases which could not be subjected to rapid re-warming there were fatalities, whereas those who had rapidly been rewarmed had no fatalities.

"6-- According to the experience reports of the Navy, those on ships had good experiences with this method of rapid rewarming in the case of persons who had experienced ship wreck. At any rate the number of persons mentioned in those reports who were saved by this method of treatment is very large."

No. 7 I may skip and like wise 8, 9, and 10 also are not of decisive importance in this trial, so I shall skip them.

"11. According to the reports I knew of at that time the units of the German Sea Emergency Rescue Service carried out more than 5,000 successful rescues, of which ten per-cent were members of the air forces and navies of the allies."

I shall dispense with reading the rest of the document.

It was signed in Bonn on 25 June 1947 by Dr. Max Matthes and on the 26th it was certified by the Notary in Bonn. I shall put this document in as Becker Freyseng document 80, which will be Exhibit 65.

As the last Becker Freyseng Document I have Becker Freyseng Document No. 81, which will be Exhibit 66. This is an excerpt from the publication of the French Academy of Sciences of 7 October 1935. It is a scientific paper on immunization by Blanc, Horvitz and Baltazar. This work, Mr. President, was discussed by the witness Haagen in his direct examination here. The Prosecutor at that time wished to have this document shown to him and I am taking into consideration that wish and the document is now. The translation into English is not yet ready but I may perhaps put it in and I am sure the translation will soon be here.

MR. HARTY: After considering the testimony of Haagen I think the Prosecution can dispense with receipt of this copy and thus dispense with the translation if defense counsel wished to withdraw the document.

DR. TIPP: This concludes Becker Freyseng's defense.

DR. DUERR: FOR DEFENDANT POPPENDICE:

I have one more document, Your Honors. This document was approved by the Tribunal Saturday afternoon. This is an affidavit by the defendant himself. I should like to have this affidavit read into the record.

THE PRESIDENT: The English translation has not yet come through. How long is the document?

DR. DUERR: One half a page, Your Honor?

THE PRESIDENT: Before proceeding I would ask if any of defense counsel know where Dr. Weissgerber, counsel for defendant Sievers, is. I understood his document book was to be ready at half past one. We could proceed if he was here.

DR. TIPP: So far as I know, Your Honors, Weissgerber was informed of this. He said that he would come as soon as he had received the English translation in the Information Center. Apparently the translation has not yet been received.

THE PRESIDENT: Proceed, counsel.

DR. DUEER: I shall now offer Poppandick Exhibit HPO 24, which will be Exhibit 24. After the usual introduction it reads:

"Regarding Professor Teitke's letter of 29 April 1943 to me I say the following:

" At the time when I was an assistant at the First Medical University Clinic, 1929 to 1932, Teitke was Chief Physician at the same clinic. Teitke later became the director of a large municipal hospital in Berlin, namely the Urban Hospital. About 1943, Professor Teitke was taken into the Public Health Administration in Poland. Teitke knew that I was active in the Race and Settlement Office, but he had no insight into my activities and tasks. Teitke wrote the above cited letter to me since he knew me personally and believed that I could give him information about the above mentioned questionnaire and hereditary card file. I did not however know this questionnaire and still don't know of it. The Dieckmann Publishing House, was so, far as I know, the house that worked for the Reich Ministry of the Interior; and the card index on hereditary was introduced by the Reich Ministry of the Interior to be used in the Municipal Health Office. Consequently I was not in a position to give Teitke the information he requested. As I remember, Teitke shortly thereafter came to Berlin and telephoned me to ask about this letter. I advised him to turn to the Health Department of the Reich Ministry of the Interior, since in my opinion, that office was competent. I never had anything officially to do with the matters mentioned in the letter, the taking care of German Soldiers' children born of Polish women, and never found out anything about that matter thereafter. This letter of Professor Teitke's to me with the request for information about matters that had nothing to do with my field of work, was an absolutely unique

occurrence. Its cause is to be found in the fact that Teitze remembered his acquaintance with me and had the vague idea that I might be able to give him some information." The document has been correctly certified. That concludes the defense of Poppendick.

DR. MARK: For Professor Dr. Schroeder.

Mr. President, I should like to put in five documents for Schroeder.

THE PRESIDENT: Counsel, have these documents been translated? Have these documents been translated into English?

DR. MARK: They have not yet been translated. Therefore, I should like to take the liberty of giving the originals to the Tribunal.

THE PRESIDENT: We will proceed first with the documents which we have already translated into English. I understand that the documents on behalf of the defendant Sievers have now been translated. Is that correct, Dr. Weissgerber?

DR. WEISSGERBER: FOR SIEVERS:

I have just inquired at the Information Center for the English translations. I was told they were not yet there and that it would take a little while still.

THE PRESIDENT: The Tribunal was assured they would be there at one-thirty o'clock.

DR. WEISSGERBER: I have just come from there and they are not there.

DR. HOFMAN: For Defendant Porkorny:

I believe that none of my colleagues have the English translations available now but they are on the way; but I am sure that my translations will not come in today, so I ask permission to put these documents in now and permission to read them into the record.

MR. HARDY: I might inquire whether or not my defense coun-

sol other than those here in the court room now have further documents to introduce.

THE PRESIDENT: Whether or not defense counsel who are not in court now are advised as to that I don't know.

MR. HARDY: We might take time to find out now how much they are going to be and adjourn until tomorrow; and my rebuttal documents I can put in in fifteen minutes tomorrow afternoon. If we have five documents for Schroeder and two for another and two from another then we might be in good stead and adjourn until tomorrow morning.

THE PRESIDENT: I was assured the Sievers documents would be ready at one-thirty and we should have the rest this afternoon and I do not desire to recess, and we can go ahead with these this afternoon.

MR. HARDY: They are not here yet, Your Honors. Shall we wait for them a few moments?

THE PRESIDENT: Has counsel for the Prosecution examined these documents of the defendant Porkorny in German?

MR. HARDY: No, I haven't your Honor. Dr. Fleming--

DR. FLEMING: I have one document I can put in now if I can get an English copy later.

THE PRESIDENT: Very well, Dr. Fleming. Dr. Fleming we will hear from you now with the document. You may proceed to offer the document for Dr. Steinbauer.

DR. FLEMING: This is an excerpt from the police record of Hoellenrainer, the gypsy who testified here yesterday. This is Document Beiglboeck 40, and it will be Exhibit 36. This is the record of Hoellenrainer's previous convictions.

THE PRESIDENT: It may be received.

DR. HOFFMAN: Mr. President, I should now like to put in the two documents for Dr. Pokorny that I did not have available during the presentation of his case but which I was permitted to put in later.

First, there is an affidavit by Pokorny himself, which gives an exhaustive explanation of what his thoughts were when he drew up his letter and explains why he thought that caladium sequinum could not be used for sterilization. I do not wish to read the document in its entirety into the record. It will be translated. However, I should like to read the most important passage.

MR. HARDY: I don't see the necessity for reading some of the passages out of this. It is an expert opinion on the part of Pokorny. His own testimony was heard on direct, and this is his expert opinion on why he thought it was of no value.

THE PRESIDENT: The exhibit may be received in evidence, but I see no reason for reading portions of it in the record, Counsel. Just offer the exhibit and give it a number.

DR. HOFFMAN: Very well. Then this affidavit is Document 29, and it will be Exhibit 29.

The next affidavit is an expert opinion by Dr. Jung of the University of Wurzburg, who states his opinion regarding the question of sterilization with caladium sequinum. This affidavit is also to be translated, but if the Tribunal will permit, I would like to read the summary at the end. It is very brief.

THE PRESIDENT: Very well, Counsel.

DR. HOFFMAN: The expert comes to the following conclusion:

"Madaus and Koch made animal experiments on sterilization through caladium sequinum. The conclusions set down in Madaus and

Koch's paper, 'Animal Experimentation as Elucidation of the Question of Sterilization by Way of Drugs, Using Caladium Sequinum', are certainly honest, but are of no importance regarding the question of caladium sequinum's sterilization effects. These effects are part of a general toxic effect of caladium extract. Caladium can be used for sterilizing, or achieve the same effects as castration, but not more and not less than can be achieved with hunger, vitamin deficiency, infection, inflammation, and so on.

"The experiments of Madaus and Koch with respect to their application to human beings are in no way proof of anything. The symptoms in the sexual glands of the experimental animals are only a revertible, partial symptom, part of a permanent injury to the organism as a whole endangering its life, and have nothing to do with true sterilization or castration. Pokorny's suggestions, which are based on certain completely unfounded conclusions from the Madaus paper, can readily be recognized as fallacious by experts in the field."

This is Pokorny Document 30, which will be Exhibit 30.

That concludes my presentation for Pokorny.

THE PRESIDENT: Counsel will deliver these documents to the Translation Department, which will translate them so that the English translations may be filed.

DR. HOFFMANN: Very well.

DR. FRISCHMANN: I have only a request, Your Honor. At the conclusion of the morning session I was told by the Defense Center that the three Brack Exhibits approved this morning by the Tribunal—namely, 52, 53, and 54—would not be translated save by explicit instructions from the President of the Tribunal I therefore ask that the Translation Department be given that explicit instruction.

THE PRESIDENT: The Translation Department will be so instructed. I spoke to the Chief of the Translation Department this noon, and he informed me that the department had not refused to translate any documents at all but had simply told Defense Counsel bringing in documents into

that they could not be ready by tomorrow morning, or this morning, but I will give instructions that these documents be translated, and, Dr. Froeschmann, if you will again offer the second document that you offered this morning, which the Tribunal rejected, that second document will be admitted in evidence.

DR. FROESCHMANN: I shall do so immediately.

MR. HARDY: Your Honor, I request that the admission of those two documents be forestalled until such time as I get an English copy so that I can render a proper objection. I do not think that the document is admissible. I have not seen it in English. I think I should see it in the English language in order to object to it.

THE PRESIDENT: You can if you desire.

DR. GAWLIK (Counsel for Defendant Hoven): Mr. President, I have one document, an affidavit which refers to the document put in by the Prosecution on Saturday, namely, NO 2631, which was accepted in evidence--an affidavit by Ackermann. I could not put in this affidavit earlier than right now because the Prosecution put in its Document 2631, Exhibit 522, only last Saturday. Since this document was accepted in evidence last Saturday, I could not bring this document earlier. For the same reason, I do not have an English translation. I could have this affidavit taken down only yesterday afternoon.

MR. HARDY: This needs clarification badly. Document 522 was put in during the cross-examination of Hoven, not on Saturday. Furthermore, Hoven stated on direct examination that he never just arbitrarily selected anybody for exterminations or injections. This affidavit completely rebuts his testimony in that an eye-witness saw Hoven point out the window and say, "I want that man's skull on my desk in the morning." It is testimony of a witness on rebuttal. I do not see any occasion for an answer.

THE PRESIDENT: Witness Hoven expressly denied the testimony to which you are referring. Who makes this affidavit, Counsel? Is this an affidavit?

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DR. GAWLIK: This is an affidavit regarding Ackermann's credibility. Mr. President, to be sure, Hoven denied this, but I must have the opportunity to substantiate Hoven's denial.

THE PRESIDENT: If the document you offer concerns the credibility of the witness Ackermann, you may offer the document.

DR. GAWLIK: Very well.

THE PRESIDENT: It would not be received if it is simply contradictory as to facts, but if it attacks the credibility of the witness, it may be received.

DR. GAWLIK: Very well.

MR. HARDY: Your Honor, I want to know who the author of this document that he is putting in is.

THE PRESIDENT: Whose affidavit are you offering?

DR. GAWLIK: Paul Dorn is the affiant. He was a witness here. At that time I could not put this question to him because at that time this Ackermann issue had not arisen.

MR. HARDY: It is perfectly all right if he puts in the affidavit of Paul Dorn. He is one of the witnesses that appeared here before Hoven took the stand, Your Honor.

THE PRESIDENT: Counsel may proceed.

DR. GAWLIK: This is an affidavit stating, "I, Paul Dorn, born 16 February 1916 in Winahelm"—and then the usual introduction.

THE PRESIDENT: Counsel, how long is the affidavit?

DR. GAWLIK: One page, Your Honor.

THE PRESIDENT: Proceed.

DR. GAWLIK: "I am the same Paul Dorn who testified here as a witness on 5 and 6 June 1947 before Military Tribunal I.

"Josef Ackermann's affidavit Document 2631, Exhibit 522, has been shown to me. I know Josef Ackermann. I made his acquaintance in the concentration camp Buchenwald in 1941. I know the general reputation which Josef Ackermann enjoyed in the concentration camp Buchenwald. Josef Ackermann enjoyed among the prisoners in the concentration camp a

very bad reputation. I still remember for certainty that Josef Ackermann in about the year 1942 or 1943 betrayed a few prisoners who had stolen some food in the camp to the SS camp management--namely, to the head of the administrative custody camp, Schober. Among the prisoners whom Josef Ackermann denounced was included the former political prisoner Heinrich Bach, a medical student by profession, from Finsterwalde. The SS camp management then carried out exhaustive investigations of the persons denounced. Heinrich Bach was to be transferred to the quarry work detail, where he very probably would have died. It is only to be attributed to Dr. Hoven's intervention that the SS camp management could not carry out this plan. Dr. Hoven first accommodated Bach in Block 46 in order to withdraw him from the clutches of the SS camp command. I think it therefore quite possible that Ackermann had a disinclination toward Dr. Hoven because Hoven helped the prisoners whom Ackermann had denounced at that time.

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"I state further Dr. Hoven never had a skull on his desk. This I know for certain. My statements here refer to the period from 1941 until his imprisonment in September 1943. I, therefore, consider it out of the question that Hoven asked Ackermann to give him a skull for his desk."

This will be Hoven Document and Exhibit No. 20. I ask that the Translation Department be requested to provide the necessary English translation.

THE PRESIDENT: The Translation Department will be so advised.

MR. HARDY: Your Honor, after hearing this document I could stipulate that Hoven didn't want the skull for his desk for an ornament. Hoven wanted the skull put on his desk. This affidavit has no value. I will stipulate now Hoven didn't want the skull for an ornament for his desk.

THE PRESIDENT: The affidavit has some value as to the witness Ackermann. In so far as stating a fact it is not proper rebuttal; but it has some pertinency regarding Ackermann's credibility.

Dr. Marx, how many affidavits have you to offer? How many exhibits?

DR. MARX: Six, your honor.

THE PRESIDENT: When were they delivered to the Translation Department?

DR. MARX: Most of them about 10 days ago. One went to them a little bit later than that. I have just heard that most of them have already been translated. Does the Tribunal have these translations?

THE PRESIDENT: Not yet.

MR. HARDY: In as much as most of these are translated can't we hold up the presentation of the Schroeder ones?

THE PRESIDENT: I wasn't going to have them presented, merely wanted to know when they were handed into the Translation Department. The Tribunal will now be in recess a few moments while I communicate

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with the head of the Translation Department. In the meantime I would have Dr. Froeschmann interpret the document to Mr. Hardy, the one he read here in Court.

The Tribunal will now be in recess.

THE MARSHAL: Persons in the court room will please find their seats.

The Tribunal is again in session.

DR. STEINBAUER: (Counsel for defendant Prof. Dr. Beiglboeck)

Mr. President, according to my application, the witness Josef Tschofenig had been brought to Nurnberg for the purposes of cross-examination. Then making his testimony about his activities as an X-ray Kapo at Dachau he raised an serious accusation against my client to the effect that a man, in his opinion, became a victim of the seawater experiments. In order to refute the credibility of that witness, especially with reference to his activity and knowledge as an X-ray expert, I have called upon an expert, an X-ray technologist, Dr. Gerhard Hammer, the head of the X-ray Institute of the Hospital of Nurnberg, and asked him to give us his expert opinion. The said man is an elderly man, a very busy physician, and only this morning in the hospital have I been able to get his opinion. In view of the importance of this matter and in order to refute the credibility of the witness I should like to get the permission to submit the opinion to the High Tribunal. Since it was not translated I shall only read the beginning and the end of that statement.

MR. HARDY: Your Honor, in this connection, might I ask defense counsel what association Dr. Gerhard Hammer had with the witness Tschofenig?

DR. STEINBAUER: Dr. Hammer has no personal connection at all with the witness Tachofenig. He does not know him personally. I have submitted to him the court record in its original, and I asked him to check Tachofenig's testimony on what happened in this record, especially with reference to his statements which he made as an alleged X-ray specialist.

MR. HARDY: If the expert witness has no knowledge of the work of Tachofenig in Dachau, where Tachofenig was working in the X-ray institute and was not a Kapo, as stated by Defense Counsel, I do not see how this witness would be qualified to testify as to the witness Tachofenig. He never saw the witness take an x-ray. He never saw the witness analyze an x-ray. The witness did not testify to the condition of the inmate whom he claimed died as a result of the seawater plates. He testified from observation. I think the document is completely inadmissible inasmuch as the expert has no knowledge of the work of Tachofenig to refer to and has never seen Tachofenig operating x-ray equipment and has never seen Tachofenig analyzing an x-ray. I do not see how he can qualify to give expert testimony as to whether or not Tachofenig is qualified to testify in the manner that he did before the Tribunal.

THE PRESIDENT: Dr. Steinbauer, I do not see how this affidavit can be admissible in the absence of any knowledge on the part of your witness of Tachofenig's personality, work, ability as an x-ray man. This application will have to be denied.

DR. STEINBAUER: Tachofenig in appearing as a witness has stated that he carried out 300 x-ray treatments daily, which would represent about 10,000 x-ray treatments per year. This expert proves that this is impossible.

Furthermore, he exactly described the state of the x-ray picture of the alleged victim of the seawater experiments. The expert states his opinion on that matter too. On the basis of

this statement, it can be clearly established that Tschofenig's testimony is incorrect, and in order to refute Tschofenig's credibility I have brought this opinion to the court room.

THE PRESIDENT: The Tribunal is of the opinion, Doctor, that this is not proper rebuttal at this time. Your application is denied.

I understand that Counsel for Defendant Sievers is ready with some documents. Counsel may proceed.

DR. WEISSGERBER (Counsel for defendant Sievers): Mr. President, I am going to submit all supplemental documents. The first document in my supplemental document volume is a letter sent by Rudolf Brandt to Sievers with reference to Professor Hirt's research with intravital microscopy. This is Document NO-059 of the Prosecution. I shall prove with this document that Himmler attached particular importance to Hirt's activity and for that reason it says in the last sentence of this document, "Please contact Hirt as soon as possible on this question and try to think out the best way of getting Hirt into a still closer connection with us."

This document will receive Exhibit Number 49.

The next document will be Siever's Document 54. This will receive Exhibit Number 50. I shall remind you that Sievers, in connection with the conference which he had with Himmler at Easter of 1942, tried to separate the departments dealing with medical questions from the administration of the "Ahnenerbe". Himmler opposed that suggestion and referred to the so-called Commissar Order with reference to Hirt's assignment. The Commissar Order itself was not submitted during the proceedings before the IMT. I have not been in a position to get a copy of this original Commissar Order. However, in order to enable the Tribunal to gain a picture of the contents of this Commissar Order, I have extracted the directives for the units of the chiefs of the Security Police and the SD, which are to be attached to the Stalags. I have submitted that in this document, and this document was also submitted before

the DMT as USA Exhibit 486. I am merely submitting this document in order to illustrate what Himmler meant when he referred to the Commissar Order during this conference at Easter 1942.

The next document, your Honor, will be Sievers Document 55, which will receive Siever's Exhibit No. 51. This is an affidavit signed by Dr. Gisela Schmitz, dated 21 April 1947. It also deals with the special protection which Himmler afforded Hirt and which caused Sievers to sponsor Hirt's research work in the manner he did on the basis of his position as Reich Manager of the Research Council. I think that I can forego the reading of this affidavit.

The next document, your Honor, will be Siever's document number 56, which will receive Sievers Exhibit No. 52. This is another affidavit signed by Dr. Gisela Schmitz, who, since she was a secretary of the Ahnenerbe from 1937-45, is in a position to illustrate the events of that time. I remind you that Sievers during his direct examination has stated, among other things, how he protected the geologist Dr. Lais, who was a professor at the University of Freiburg, when he was removed from his office because his wife was Jewish.

Furthermore, this affidavit tells how Sievers protected Freiherr von Bokitsanaky because he, not being of pure Aryan descent, feared difficulties in the continuance of his duties.

The next document, your Honor, will be Siever's No. 57, which will receive Exhibit No. 53. This is an affidavit signed by Professor Dr. Joseph Wittig. Wittig is a well known Catholic clergyman who is well known beyond the boundaries of Germany. This Professor Wittig certifies that he made Siever's acquaintance through Friedrich Hielscher in the year 1932. Wittig had known Hielscher well and had been on friendly terms with him since 1932. He discussed with Hielscher his fight against National Socialism, and on which occasion Hielscher repeatedly told him about the task which he had given Sievers. I quote the fourth sentence of this affidavit: "As a

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Christian theologian I can testify that I am deeply convinced of the moral aims and the profound seriousness in which they commenced the task of fighting the Third Reich by applying similar tactics to those of the Trojan Horse."

The next document, your Honors, will be Sievers No. 58 which will receive Exhibit Number Sievers 54. This is an affidavit signed by the Dutch university professor Bohmers who received support from Sievers. Sievers had supported him in undermining Saxo-Frisia and Fryska Ris, two political and semi-cultural societies in Holland.

The next document is an affidavit and an opinion by Professor Villinger regarding Sievers. This is Document 59, Exhibit 55. Already before Sievers' direct examination I have endeavored to obtain a psychological opinion regarding Sievers' personality. Professor Villinger, professor of psychiatry and neurology and the director of the University Neurological Clinic at Marburg, has agreed to carry out this task. It is only due to the amount of work this professor has to do that I was not able to submit this opinion during the direct examination of Sievers. I shall forego reading this extensive opinion into the record and I should merely like to draw the attention of the Tribunal to the last page of that document where the Tribunal will find a summary of Dr. Villinger's opinion. This opinion, as in the case of all the other documents, is certified in the proper manner.

The next document will be Sievers No. 60 which will receive Exhibit number 56. This is an affidavit signed by Count Anton zu Innhausen and Knyphausen is dated 27 May 1942. It was certified by a public notary. Knyphausen, although joining the NSDAP in 1930, was an opponent of the Nazi regime. For that reason he was sentenced to death by a German Peoples Court in the year of 1942. He was sentenced thus in absentia. Now this witness describes how Sievers supported him in his illegal work which he carried out against the National Socialist regime from Sweden.

I shall only quote one sentence from this affidavit: "Without Sievers' support my activity lasting for five years as a courier would not have been possible."

The one but last sentence is very important and throws considerable light on Sievers -- and I quote: "Sievers never accepted

any remuneration. He always acted entirely unselfishly. Occupying a position which offered almost limitless possibilities for profiteering, he was just as poor as before when I saw him for the last time in November 1943, on the evening before my escape (to which he advised me and which he covered up, even though he was bound to be held responsible as a guarantor)."

The next document will be Sievers Document 61 which will receive the exhibit number 57. This is a short Excerpt from the book of the present Bishop of Munich and Freising, Johann Neuhausler. This Bishop Neuhausler, from the year 1941 to the year of 1945, had been an inmate at Dachau. This is a result of the activities which he carried out against the National Socialist regime as vicar of Munich. Neuhausler, in an extensive book, defined his attitude towards a number of questions which are very interesting in connection with Sievers' defense. On page 15 of his book Neuhausler states that again and again after the war he had been asked, "Where was the resistance against National Socialism?" This classical witness for the movement against the regime says with great emphasis: "The resistance was right here." It describes in detail the difficulties which every resistance entailed. He said, for instance, that the spreading of leaflets was impossible. He quotes utterances of Cardinal Mundelein from Chicago in order to prove that the verbal enlightenment and the opposition against the National Socialist regime was extremely difficult.

Heading another chapter he speaks about the zones of the Third Reich, the Chinese Walls in the Third Reich; then he gives us very interesting experiences of his in the concentration camp of Dachau. This is particularly interesting in view of Sievers' testimony.

This classical witness on page 25 of his book says: "We respect the soldiers who risked their lives during severe battles, but I think we also must respect the silent fighters in the country who, throughout the years--lasting 12 years--against a bitter and cruel enemy within

the country, have risked their lives for truth and justice for freedom of the people and freedom of the church, for the overcoming of tyranny and Godlessness."

The next document will be Sievers No. 62 which will receive exhibit number 58. This is an affidavit signed by the attorney, Dr. Polckmann, the defense counsel of defendant Dr. Schaefer.

I remind you that my client was charged during the trial here while he offered himself as a witness before the I.M.T. Sievers then explained that he had been brought here as a witness by force and that he was heard against his will as a witness for the defense before a commission.

Dr. Polckmann points out that he had written him a letter where he pointed out to him that he was a member of the resistance movement. These statements are confirmed by Dr. Polckmann, who at that time was representing the SS in the proceedings against the International Military Tribunal.

The next document, your Honors, will be a letter written by Robert Foix dated 10 February 1946 and addressed to Dr. Schmitz-Kahlmann. I shall point out at the outset that this letter has no certification and I shall try to tell the Tribunal for what reasons that was impossible for me.

The witness, Robert Foix, who worked with Rascher developing the polygal drug, I had searched for for a long time before finally finding out his address. The witness Foix came to Nurnberg and I had an opportunity to talk to him briefly one evening. I intended to meet him next morning in this building and get an affidavit from him. I intended this meeting for the end of the morning session of that day.

When I returned to my office in the Defense Information Center Foix was no longer there and I was told that he had been picked up by a representative of the Prosecution and it was no longer possible for me to establish further connection with him.

After this incident I immediately made the application to the

Tribunal that this witness Feix be put immediately at my disposal for the purpose of making an affidavit. Neither the prosecution nor the General Secretary were able, however, to tell me the residence of Robert Feix.

Mr. Hardy, on 20 March of this year, upon the request of this Tribunal stated that Feix had been arrested here and had transferred to Dachau.

I finally went to Dachau on 22 March, and I was told there that Feix could not be placed at my disposal. I tried twice again to speak to Feix in Dachau but I did not succeed. Because of these efforts I was not in a position to obtain a proper affidavit signed by Robert Feix.

On the other hand, however, I am very anxious to show the Tribunal through Robert Feix how Sievers helped him in the concentration camp at Dachau. The letter dated 10 February 1946 was written at a time when Sievers could not at all expect that he would at any time be placed under indictment; therefore no one can say that this letter was written in view of the currently running trial. Therefore, this letter no doubt has a certain probative value, and I would like to ask the Tribunal to admit this letter in evidence in particular view of the circumstances, as I have described them before. The prosecution at that time had made it impossible for me to obtain a proper affidavit from him.

MR. HARDY: Your Honor, this document has no jurat as to whether it be written in 1946 or 1947. It is clearly inadmissible. The document was obviously written to assist defendant Sievers at such time when he was incarcerated, and being interrogated extensively, I presume. I don't know the circumstances but it seems to me that the defendant must adhere to the regulations of this Tribunal.

THE PRESIDENT: The document offered for defendant Sievers is merely a letter purporting to be signed by one Robert Feix and bears no jurat. It is not sworn to, and it is also purely cumulative evidence, but due to its form if previously presented it would not have been admissible at any time. Objection sustained.

DR. WEISGERBER: As the last document, Your Honor, I am submitting an affidavit written by my client dated June 30. When the prosecutor last Friday submitted his supplementary document book, I asked the Tribunal's permission that I obtain an affidavit from my client in regard to one document offered by the prosecution. This was approved by the Tribunal and I should therefore ask you to accept this affidavit as Sievers affidavit No. 60. The affidavit has not yet been translated.

MR. HARDY: I don't recall any approval on the part of the Tribunal to admit this evidence. I don't recall that at all, Your Honor.

THE PRESIDENT: The only thing stated in connection with these matters was these documents could be offered, if offered in time, and that they would be considered. There is no approval of the documents to agree to their submission. It simply applies to the permission to offer the documents.

MR. HARDY: I don't see what was brought out in the way of new evidence in the rebuttal document book in connection with the defendant Sievers and would give reason for a sur-rebuttal document of this nature. It seems to be nothing to me except what Sievers did as chief of the Ahnenerbe, and inasmuch as he tried to limit his responsibility in this in his cross examination---

THE PRESIDENT: The Tribunal has no copy of the affidavit and is therefore not advised as to the statements.

MR. HARDY: There is a German copy here, Your Honor. There are no English copies. It might be helpful if defense counsel stated what he purports this document to prove.

THE PRESIDENT: Defense counsel may state the substance of this affidavit.

DR. WEISGERBER: The prosecution last Friday submitted Document NO-3629. This was a letter written by Sievers to Hirt dated 3 January 1942, which refers to Hirt's research work. I remind you that during Sievers' direct examination Hirt's research work was already discussed. During the cross examination at that time the prosecutor did not make use of the contents of this letter. For that reason I was not in a position at that time to answer this letter. Since the prosecutor has done that now, using his supplemental document volume, I ask to be permitted to define my attitude towards that letter.

MR. HARDY: The prosecution doesn't see the materiality of this in this connection, Your Honor. They have had ample opportunity to testify to these facts. This is a rebuttal document, rebutting the testimony of

the defendant. Furthermore, I cannot further ascertain what my objection might be to it without seeing the translation, and I insist on seeing the translation in this connection.

I don't see cause for further affidavits of this nature, particularly when this is in the true nature of rebuttal evidence.

DR. WEISGERBER: Mr. President, if I am not to be allowed to define my attitude towards a letter which has only lately been presented by the prosecution, the contents of which have not been mentioned during the direct nor the cross examination, I must consider that the rights of defense of my clients are being limited. For that reason I must ask you to permit this affidavit to enter the record, since it is not too long and since its translation will not make too much difficulty. However, a written translation is not available at the moment.

MR. HARDY: Your Honor, the prosecution wishes to point out, for the sake of future trials, the theory of rebuttal evidence. This document, which the prosecution introduced in rebuttal, is NO-3629. Defendant Sievers testified on direct and on cross examination, in theory, that he was only more or less a rubber stamp in the job as the chief of administration of the Ahnenerbe Society, that he did not instigate medical experiments, that he in no way tried to bring medical experiments or scientific research in the concentration camps under the yoke of the Ahnenerbe Society. This document states clearly and shows the efforts made on the part of Sievers to do what he denied. I don't see the purpose of allowing him to come back and give another answer or explanation of this, when this completely refutes and rebuts his testimony.

DR. WEISGERBER: Mr. President, if such a letter completely torn from its context is suddenly presented, it may under circumstances be misinterpreted. I think that it is therefore necessary to clarify the circumstances under which this letter was written, and show its connections, and I had opportunity to do this neither during the direct nor the cross examination.

MR. HARDY: Your Honor, I will pass the document up for Your Honor's

perusal. I want to call your attention to paragraphs two and three, which are things which will be very familiar to you.

MR. WEISGENDER: That does not alter the fact that this letter is being presented here completely torn from its context and for that reason can well be misinterpreted, and therefore I want to submit this affidavit.

THE PRESIDENT: If counsel believes that a letter like this, which is an exhibit in evidence, could be misinterpreted, that is a matter he could explain in his brief and argue as to the true interpretation of the letter, according to his viewpoint. The letter in question, counsel, is clearly proper rebuttal evidence, to be introduced on behalf of the prosecution, as it tends to destroy the testimony of the witness Sievers, which he gave from the witness stand. Now, the defendant Sievers had all the time he desires on the witness stand to explain his position in these matters. Now, if he could be allowed to present further documents to attack such evidence, after this time the prosecution could offer further documents to attack this affidavit, and the chain would never end. The Tribunal is of the opinion that this affidavit is too late when offered at this time, and the objection is sustained.

When I told defense counsel that from time to time they were permitted to offer a document, it simply gave them the right to call these documents to the attention of the Tribunal. My statement had nothing to do with the question of the admissibility of the documents in the case of an objection's being urged to them. It is simply that the Tribunal would hear any offer on the part of the defense counsel and then determine the matter.

Objection sustained.

DR. WEISGERBER: This concludes my defense of Sievers.

THE PRESIDENT: We will hear from Dr. Froschmann, who has a document I told him he could offer.

DR. FROSCHMANN: Mr. President, I have handed the Document Book No. 64 during the recess to the Prosecutor and explained its contents to him by the use of an interpreter. It is dated 30 June 1947. It will be marked Exhibit No. 65 and I am handing it to the Tribunal.

THE PRESIDENT: This document will be received in evidence by the Tribunal.

DR. FROSCHMANN: Thank you, Your Honor.

THE PRESIDENT: Are there any further documents ready to be offered? I understand that the document books of the defendant Hrugowsky and defendant Schroeder will be ready by tomorrow morning when they can be offered. I don't know if they are ready now.

MR. HARDY: Other than the documents for Hrugowsky and Schroeder, do any other defense counsel have documents to offer? Are those the last documents? The Helts documents have been completed, Your Honor, Dr. Willie completed that the other day. Rose has been completed.

I think then, Your Honor, the only documentary evidence we have to receive now is the documentary evidence of Hrugowsky and Schroeder and the one other rebuttal document book of the Prosecution.

THE PRESIDENT: That is my understanding. This supplemental document book No. 3 for Rose has been offered, has it not?

MR. HARDY: That has been offered, yes.

THE PRESIDENT: I thought so. The offering of your document book will not consume more than one half day?

MR. HARDY: Much less than that, Your Honor, I think I can put it in in fifteen or twenty minutes if Dr. Gawlik does not have too many objections.

THE PRESIDENT: The Tribunal will be in recess until 9:30 o'clock tomorrow morning.

(The Tribunal adjourned until 3 July 1947 at 0930 hours.)

Official Transcript of the American Military Tribunal in the matter of the United States of America against Karl Brandt, et al, defendants, sitting at Nuernberg, Germany, on 3 July 1947, 0930, Justice Beals presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

The Honorable, the Judges of Military Tribunal I. Military Tribunal I is now in session. God save the United States of America and this honorable Tribunal. There will be order in the court.

THE PRESIDENT: Mr. Marshal, have you ascertained if the defendants are all present in court?

THE MARSHAL: May it please Your Honor, all the defendants are present in the court.

THE PRESIDENT: The Secretary General will note for the record the presence of all the defendants in court.

Counsel for the defendant Krugowsky may proceed.

DR. FLEMING (Counsel for defendant Krugowsky): Mr. President, let me at first submit Supplement 2 to my document, which is just being handed over in the English language. This is the copy without a cover.

The first document, Your Honor, will be Krugowsky No. 103, which I offer as Exhibit No. 97. It is an affidavit signed by Dr. Koch from the firm of Madans and deals with the incendiary bomb affair.

The next document will be Krugowsky No. 104. This is an affidavit—

THE PRESIDENT: Just a moment, counsel, not quite so fast, we want to note these exhibit numbers on our documents.

DR. FLEMING: The first one was Document No. 103, Exhibit No. 97.

THE PRESIDENT: All right, doctor.

DR. FLEMING: The second document, Your Honor, will be Krugowsky No. 104, Exhibit Krugowsky 98. This is an affidavit signed by Professor Dr. Beitz, the director of the Robert Koch Institute in Berlin and deals with the manner in which bacterial cultures were sent away.

The next document, Your Honor, is Krugowsky No. 105 and has already been submitted in the meantime by the co-defendant Professor Rose. I don't know whether I am to give it another exhibit number in order to

include it with my own material.

THE PRESIDENT: Well, you can give it your own exhibit number, but give us a note as to the number.

DR. FLEMING: Yes, Your Honor, Mrugowsky No. 105 will become Mrugowsky Exhibit No. 99.

THE PRESIDENT: Counsel, can you give us the number of the exhibit of Rose for this same document?

DR. FLEMING: I shall be able to tell the Tribunal the number after recess. At the moment I am not able to do that.

THE PRESIDENT: Very well, Doctor.

DR. FLEMING: The next document, Your Honor, is Mrugowsky No. 106 and will become Mrugowsky Exhibit No. 100. It is an affidavit signed by Professor Meyer Abich. He is a university professor and one of the best known philosophers we have in Germany. At the moment he is the leading representative in Germany of Holism, the founder of which was Field Marshal Schute. This ideology has been fought by National Socialists during the Nazi regime. This Professor Meyer Abich knows Mrugowsky for many years and knows that Mrugowsky was a follower of Holism. He also speaks of Mrugowsky's personality.

The next document is Mrugowsky No. 107. I offer this document as Mrugowsky No. 101. It is an affidavit signed by the Kapo Arthur Dietzsch from Block 46 in Buchenwald. Dietzsch speaks in detail about the question whether Ding's diary was only something which was reconstructed or whether it was the original diary.

THE PRESIDENT: Well, counsel when you speak of the Ding diary as being reconstructed, just what do you mean? Do you mean that it has been altered or do you mean it is not a daily diary, but written up at odd times by Ding? Do you consider that the document has been forged by alterations?

DR. FLEMING: I maintain, Mr. President, that the authentic diary has been burned. Dietzsch confirms that fact expressly. Dietzsch was present when Ding burned the authentic diary in a stove in Block 46. I

maintain that the diary which Kogon—

THE PRESIDENT: I understand, Doctor. I just want to know what you mean by the use of the word "reconstruction".

MR. HARDY: Your Honor, I question the admissibility of the affidavit of the witness Dietzsch. It may be true form and it may comply with the rules of the Tribunal 100 percent, but Dietzsch was here; defense counsel announced they were going to call him as a witness so the prosecution could examine him. The Tribunal expected him as a witness and wanted to interrogate him and they found out Dietzsch did not have the information they desired, so Dr. Fleming says he did not want to call Dietzsch. Now he comes up with an affidavit of Dietzsch without the right of the prosecution to cross-examine. I don't think it is admissible, Your Honor.

THE PRESIDENT: The objection is overruled. The document will be admitted. Counsel for the prosecution may make an argument that might tend to lessen the weight to be given to the affidavit, showing those factors, but the document will be admitted.

DR. FLEMING: In that connection, Mr. President, let me say at that time when Dietzsch was present here, I informed the Tribunal that I did not intend to call him into the witness stand and thereby delay the Tribunal, because the points about which I wanted his testimony were not known to Dietzsch and that in particular the chain of command. The prosecution said at that time—

THE PRESIDENT: Well, counsel, the objection of the prosecution has been overruled and the document will be admitted.

DR. FLEMING: The next document, Your Honors, will be Document Mrugowsky No. 108. This will be Exhibit Mrugowsky 102. This document contains an affidavit signed by Dr. Erwin Schilling. Schilling was the chief of Department 16 ever since 1944 where he acted as a hygiene Referent. He therefore knows about the authority and the significance of the hygiene Referent at Department 16. He also knows about Ellenbeck's activity, who is repeatedly mentioned in Ding's diary and who there produced blood serum.

The next will be the affidavit by Ruoff, Document No. 109, Exhibit Mrugowsky 103. Ruoff was the chief of the SS operation office under Justtner. I beg your pardon - he was not the chief but the IA, which means that he was merely in the position where he had to deal with all questions of organization, questions of operation and questions of administration, and he testifies about the possibility of double subordination as we maintain was the case with Ding in Buchenwald.

The next document will be Mrugowsky 110, Exhibit Mrugowsky 104. This is an affidavit signed by Dr. Adolf Murthaus. Murthaus was one of the closest collaborators of Mrugowsky. He participated in the cold meeting at Nuernberg and in a discussion regarding Ruthenol, where also representatives of I.G. Farben, Weber and Kohlmann were present. From September 1943 until September 1944, that is, during the time between Mrugowsky and Schilling, he was the chief of the Department 16 and, therefore, can tell from his own knowledge about the relationships of command there.

The next document, Your Honors, will be Mrugowsky 112, which I offer as Mrugowsky Exhibit 105. It contains an extract from the fifth letter of Hippocrates which some time ago I put to the expert, Dr. Ivy.

The next document, Your Honors, will be Mrugowsky No. 113. This will become Mrugowsky Exhibit 106. It is an affidavit of Professor Dr. Killian, the ordinarius for surgery at Glotterbad near Freiburg, Breisgau, at the sanatorium there. He has special experience in the field of gas gangrene and talks about the Fraenkel toxoids.

Mrugowsky No. 114 will become Exhibit Mrugowsky Exhibit 107. This is

an affidavit by Dr. Konrad Morgen, who was active in Eichenwald in his capacity as an SS investigating judge. The prosecution has submitted a number of documents originating from him. Dr. Morgen speaks about the manner in which prisoners were selected, whom he had observed carefully, and he is the only one who from his own knowledge can testify about the chain of command at Block 46. On top of the second page of the document he states - this is the first line of the second page - I quote:

"To start with, it seemed essential to obtain full knowledge of the facts. In order to clear up these crimes I had repeated talks with Dr. Ding. On this occasion Ding showed me a paper signed by Grawitz and by which he, Ding, was ordered to conduct these experiments. Ding said, 'You can see that I've been very careful. I've thought all the time that one day one of you jurists will poke his nose into this business, so I insisted on having the order in writing.'"

Further down in the document he says that he was ordered to go to Grawitz at the end of these experiments in order to report to him and that Grawitz on that occasion had told him that Ding was his man and that he would regret it very much if Ding was in any way incriminated by Morgen's investigations.

He talks in great detail about the manner of selection of prisoners and also about Kogon's personality. On page 8 of this affidavit he is speaking about the special experiments on four persons mentioned in Ding's diary. Ding in this connection also mentions Dr. Morgen and Dr. Morgen testifies that Dr. Ding's descriptions about this experiment were wrong. He, in turn, describes the details of these experiments.

The next document is an affidavit signed by Udo von Woyrach, Document Mrugowsky No. 115. It is on page 59 of the English document book. The affidavit is signed by Udo von Woyrach, which will become Mrugowsky's Exhibit 108. Woyrach is the man upon whose request the incendiary bombs were made with the drug B-17. He speaks about the origination of these experiments in detail.

The next document I do not want to submit. It is Document Mrugowsky

No. 116. It is an excerpt from the newspaper "The Stars and Stripes". It has no certification and I am sure that the prosecution would object to the admission of the document.

I now pass over to Mrugowsky Document No. 117, which is an affidavit signed by Dr. Scharlau. This will become Mrugowsky No. 109. Dr. Scharlau was one of the closest collaborators of Mrugowsky. Originally, I intended to call him here as a witness but I have not done so because Mr. Hardy, when I suggested to call him on the witness stand, had stated that he would not cross-examine him and, therefore, in order to save time I merely am submitting his affidavit. He speaks about the creation of the hygiene institute, about the manner in which the hygiene institute worked, about the official trips on which he accompanied Mrugowsky. He is the man who travelled with Mrugowsky during the winter 1941-1942. This is during the period when the so-often-mentioned conference on 28 December 1941 allegedly took place, which is the first entry in Ding's diary. He also travelled with Mrugowsky the summer of 1942. That is from June until the last third of August. This is the time when the sulfonamide experiments took place. His testimony shows that even during this time Mrugowsky was not in Berlin.

The next will be Document Mrugowsky No. 120 which will become Mrugowsky Exhibit 110. It is signed by Dr. Hans-Dieter Ellenbeck, also a member of the Hygiene Institute. He is mentioned in Ding's diary in connection with the blood serum and reconvalescent serum and he makes statements with reference to those. In addition to that, he carried out a number of nourishment experiments in Buchenwald.

The next document will be the affidavit by President Robert Hecker, which will become Mrugowsky No. 131, Exhibit 111. Hecker was the presiding officer at the Reich Ministry of Justice. He talks about the competence and the duties of an execution physician. This is relevant in connection with the aconitin poison bullets.

I further submit affidavit of the defendant Mrugowsky himself, which is Mrugowsky 124, and will become Mrugowsky Exhibit 112. Mrugowsky here defines his attitude towards the documents submitted after he left the witness stand. It particularly deals with the documents submitted during examination of the co-defendants Rose and Poppendick. When the first of these documents was submitted I objected to their admission because Mrugowsky would not be able to define his attitude towards them. The Tribunal then said I would be able to call him to the witness stand at a later date. I waited until all the material was presented and then did not ask to have him recalled to the witness stand. Instead I asked him to write an affidavit wherein he defines his attitude toward a number of these documents put in by the Prosecution after he left the witness stand and here he mentioned -

MR. HADY: I must object to the introduction of this affidavit. This affidavit deals with matters that Prosecution introduced in evidence during cross examination of Mrugowsky. I asked him specifically questions concerning these matters and he denied my questions and answered in the negative to my questions and in as much as I did not wish to introduce such documents at that time I didn't impeach his credibility as I did with the other documents, but in this particular instance I saved the documents to use on Rose's cross examination and one in Poppendick's cross examination and they are merely rebuttal documents refuting the testimony of Dr. Mrugowsky and I gave him ample opportunity to tell this Tribunal about any connection he had with the Robert Koch Institute and Rose and I gave him ample opportunity to do that on cross examination and he didn't do it and it completely refutes his testimony.

DR. FLEMING: Mr. President, in this connection, let me say that Mrugowsky had no opportunity to reply to these documents submitted, in Poppendick's, Rose's and the other co-defendant's cross examinations that took place after his own examination. In Dr. Rose's examination, for instance, the documents Exhibits 491 and 492 were submitted, one is

a letter by Rose to Krugowsky and the other is a letter from Krugowsky to Rose. The Prosecution could just as well have offered these two documents when Krugowsky himself was examined. Then he would have been able to reply to these documents and would have been able to explain how these letters originated and what the individual points contained therein mean. When Mr. Hardy maintains now that he already asked Krugowsky on the witness stand about the contents of these letters, it is not correct. Krugowsky, of course, was not in a position to define his attitude towards the subjects contained in the letter inasmuch as they were not submitted in evidence.

It is important to reply to the various subjects and quotations contained in the documents.

THE PRESIDENT: Do I understand, counsel, this is the last affidavit which you were submitting, the only other affidavit?

DR. FLEMING: I have two more documents, Mr. President. One has been certified. It is a copy containing an extract from the DE trial and deals with execution orders from Himmler and has the number 1751 PS. I have handed this document to the General Secretary for the purpose of certification. From the General Secretary it went to the language division and has not come back. And the last document is an affidavit by Krans. Krans was approved to me months ago as a witness but I only saw him a few days ago. Two days after his arrival I asked him to prepare the affidavit which has not yet come back from the translating division. These are the only two documents which I wish to submit.

MR. HARDY: This extract from the DE need not be sent to the Translation Division.

THE PRESIDENT: I did not understand counsel to say that. I understood counsel to say it had been sent to the Secretary General.

MR. HARDY: And then to the translation division afterwards. That is completely unnecessary.

DR. FLEMING: Only the affidavit by Krans will have to be

translated. I could only get this affidavit at the end last week because the witness only appeared then.

THE PRESIDENT: Mrugowsky affidavit 124, the affidavit of the defendant Mrugowsky will be admitted in evidence, and the objection of Prosecution is overruled.

DR. FLEMING: It is Mrugowsky 124, Your Honor. Now document 1751 P 8, Regulations regarding executions, will become Mrugowsky Exhibit 113.

THE PRESIDENT: I don't know whether we have a copy of that or not, counsel.

DR. FLEMING: I don't think the Tribunal has a copy. I only received the certification for that document yesterday and I haven't yet received my copy. However, there must be the original document from the ET trial.

MR. HARDY: If Dr. Fleming could give us the page number of the ET record, I suppose that would be the first thing to logically check and refer us to whatever page of the ET record it is on and what date and then it isn't necessary to submit a translation of it.

DR. FLEMING: I will be able to ascertain that during the recess.

The next document, Your Honor, will be the affidavit by Kranz, which will be Mrugowsky document No. 126, Exhibit 114.

THE PRESIDENT: Counsel, the translation of the document has not yet been received. I don't know when it will be ready. Have you the original affidavit in German?

DR. FLEMING: The original is here, yes. I handed the original to the Secretary General. It has been submitted for translation.

MR. HARDY: The document is clearly admissible, Your Honor. There is no question of that. It is a Prosecution document admitted before the IMT, which Dr. Fleming has submitted to the translation division, for translation, which is actually unnecessary.

THE PRESIDENT: I understood counsel is not speaking about another document, an affidavit which was prepared here recently.

MR. HARDY: Well, I haven't this other document yet, Your Honor to see what it is. I can't get a page number on it and I can't get a translation. I don't know what he is referring to and I want to get that information. It seems to me he could give me some information so that I could find it in the record.

THE PRESIDENT: Counsel stated he would give the page of the English translation, of the English documents at the morning recess. He didn't seem to have it now. Of course, a certified copy of the record before the IMT is clearly admissible. Counsel is now speaking, as I understand him, about another document, about an affidavit which he had recently procured.

DR. FLEMING: Yes, I received this on the 25th of June and I have handed it the same day to the translating division. I think I will have it very shortly and I will see to it myself.

MR. HARDY: May I see the original, please?

THE PRESIDENT: Please submit the original of this affidavit to the counsel for the Prosecution.

DR. FLEMING: Krans was Dragowsky's collaborator in the Hygiene Institute and talks about a number of matters in that connection.

MR. HARDY: I merely asked him when counsel submitted it to the translation division.

THE PRESIDENT: When did counsel submit that document for translation?

DR. FLEMING: I am just being told that the affidavit was taken down on the 25th of June and was sent down to the language division on the same day but only yesterday the mimeographed copy came back to us, so that it was only translated yesterday.

MR. HARDY: The translation division has no record of it coming down on this date. I won't object to the admissibility. It is in good form but again I wish an English translation of it at some time.

THE PRESIDENT: After the recess we will endeavor to find out when the English translation will be available. We will pass that

matter for the present.

DR. FLEMING: Then there are excerpts from the record of the Pohl trial which are before the Tribunal. These will be in Krugowsky's supplemental volume No. 3. I have these documents here, the certified copies. I think they were before the Tribunal yesterday and one such copy will be handed over as Krugowsky Exhibit No. 115. All of these documents are excerpts from the records of the Pohl trial. Therefore, it is not necessary to hand them to the translating division so that they can be handed over to the Tribunal in the English language. I shall give it only one Exhibit number, even though these excerpts are all from different days.

THE PRESIDENT: All that is necessary on these documents is a certificate from the Secretary General of the LT that they are correct copies of evidence taken in the Pohl trial.

DR. FLEMING: This certificate is ready, Mr. President.

THE PRESIDENT: I would assume that the certificate will be prepared very soon. It needs a comparison of the documents. That is all.

DR. FLEMING: The certificate is before you. I have already handed it to the Secretary General in writing.

THE PRESIDENT: Then it has been certified?

DR. FLEMING: Yes, Your Honor.

THE PRESIDENT: Will you hand the certification to the Tribunal?
(The Secretary does so.)

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THE PRESIDENT: Krugowsky Exhibit No. 115, certified copy of the records in the Pohl trial, is admitted in evidence.

DR. FLEMING: This, your Honor, concludes my submission of evidence on behalf of the defendant Krugowsky.

MR. HARDY: Your Honor, I merely want to state that Prosecution Rebuttal Document Books have been filed with the Defense Counsel Information Center and they may secure them there to be used later on today.

THE PRESIDENT: Defense counsel having heard the announcement of Prosecution that Prosecution Document Book of Rebuttal Documents has been filed with the Secretary General and is available to the counsel of defense. Those documents will be offered later today.

The Tribunal would inquire whether translation of the Schroeder documents has been received by Dr. Marx, counsel for Schroeder.

DR. MARX: Dr. Marx, counsel for the defendant Schroeder. Gentlemen of the Tribunal I have not yet received these documents in translation.

THE PRESIDENT: I understand that they are translated and will be available within a very few moments if they are not already prepared.

DR. MARX: Very well, your Honor.

THE PRESIDENT: Any other documents to be offered by defense counsel?

There being none the Tribunal will proceed. The Tribunal is advised that the Schroeder documents are now being assembled in the office of the Secretary General. The Tribunal will be in recess for a few moments until the documents are available.

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: I understand that the Schroeder documents have been delivered. Counsel for Schroeder may proceed.

DR. MARK: (Counsel for Professor Doctor Schroeder.) Your Honors, I begin with the submission of my documents for Professor Dr. Schroeder. The first document, which I have to offer, is Schroeder document No. 28 to which I give Exhibit No. 20. This is an opinion on the defendant Schroeder by Prelate Dr. Kreutz, apostolic protonotary at Freiburg/Breisgau. The Tribunal will remember that I intended to submit this document, but it was not certified at that time. The certification has now been obtained. I ask that this document be admitted as Exhibit No. 20.

The next document is Schroeder No. 29. This is an affidavit by Professor Dr. Marx Meyer of the University Clinic for ear, nose and throat diseases at the University of Teheran, dated 28 April 1947. Professor Meyer sent this statement quite spontaneously and unsolicited, when he learned from the press that Professor Schroeder was a defendant in the Medical trial in Nurnberg. I should like to read some passages from this affidavit. This is paragraph 2:

"In 1922 or 1923 I made the acquaintance of Dr. Oskar Schroeder by virtue of the fact that he was ordered as a medical officer to report for special training to the ear - nose and throat (larynx) clinic of Wuerzburg University, where I then held the position of a first assistant to and deputy of the doctor, Prof. Paul Manasse. Our common work continued until 1925 or 1926; I do not remember exactly which year it was after the lapse of so much time. After Herr Schroeder left Wuerzburg, our friendship

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continued unchanged until 1935 and even beyond this when I had to leave Germany on account of the racial laws."

And the first sentence of the next paragraph:

"Even in 1939, during my wife's visit to relatives in Germany in the course of which she made many bad experiences with so-called former friends, Herr Schroeder and his wife tried to show their old friendship in every possible way."

Then I shall read all of the next paragraph because I think it is especially striking:

"Naturally, the basis of every friendship is personal sympathy, besides this, however, respect of each other's personality must also be present, in order to ensure a friendship of long standing and it was just this respect of Herr Schroeder's personality, which I possessed to the highest degree. For his professional as well as his human qualities, he always appeared to me a man as he should be but whom I met only on rare occasions. Of an irreproachable personal integrity in his private as well as his professional conduct, he was already at that time not only well qualified as a physician, but moreover, showed a genuine concern for his sick and was ever ready to extend his help to the very poor. His feeling of comradeship toward his colleagues was beyond doubt and he met every one half way in the same comradely and open manner, regardless of racial and class prejudices with the result that he was held in high esteem at the clinic by those in high and low places, young and old, Christians or Jews. I know that Professor Hellman, who immigrated to Palestine (Haifa, Hadassah-Hospital) would gladly corroborate my statement."

I skip the next two paragraphs and I shall read from the second paragraph from the end:

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"Already at that time it was not quite safe for a man, even in a high official position, to profess his friendship to a non-Aryan or even to further his cause in any way. But this did not disturb Herr Schroeder, who at that time was an assistant to the Chief of the Medical Services of the Reichswehr. He proposed to his chief, Generaloberarzt (Lieutenant General, Medical Service) Professor Dr. Waldmann, to entrust me with the drawing up of a questionnaire concerning a certain throat disease, which at that time suddenly and frequently struck the Reichswehr; he presented me to his chief and I was given this assignment, which, however, due to my departure from Germany, was left unfinished, if I recollect correctly."

This affidavit of Professor Meyer of Teheran is a good picture of Professor Schroeder's character as a human being, as a doctor and as an officer of the medical corps. I offer this document as Exhibit No. 21.

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DR. MARK: The next document is Schroeder No. 30. This is an affidavit by Professor Dr. Roessle, ordinary professor of the University of Berlin, director of the University Charite' Hospital of 2 May 1947. It describes the nature of the research assignments and also gives a picture of how the medical inspectorate dealt with these research assignments. It also discusses the financial aspect. Moreover, it gives a brief statement as to Schroeder's and Becker Freyseng's personality. I will assign Exhibit number 22 to this document.

THE PRESIDENT: Counsel, is that marked Exhibit 21 or 22? 22 is correct?

DR. MARK: 22 -- 22. The next document is 31. This is an affidavit of Dr. med. habil Fritz Roeder in Goettingen 9 May 1947. It also deals with the research assignments and research work and it presents a picture of how this matter was handled. It also comments on the research subsidies. I offer this document as Exhibit 23.

The next document is Document No. 32 which will be Exhibit 24. This is an affidavit of Professor Franz Vollhardt of Frankfurt on the Main and Dr. Edgar Hermann.

THE PRESIDENT: Apparently, counsel, we have not yet received that document in English.

DR. MARK: I am sorry, Mr. President. I didn't understand you. Does the Tribunal have the translation of this document?

THE PRESIDENT: No, we have not.

MR. HARDY: Your Honor, this is in a proper form. However, it is an affidavit of Dr. Franz Vollhardt who appeared here as a witness. I wonder what is the purpose of introducing this in behalf of the defendant Schroeder.

DR. MARK: As counsel for Schroeder and Becker-Freyseng, I intend to prove by submitting this document how the opinion of Professor Schroeder was formed and what material was available for him to base an opinion on these questions on. This is necessary because the prosecution has ex-

pressed certain doubts as to whether the material which Professor Vollhardt had was really in order. Therefore, I should like to read the important passages from this affidavit.

MR. HARDY: Your Honor, prosecution submits that Professor Vollhardt testified here at great length about his own experiments and he gave expert opinion concerning the material he had in the Beiglboeck experiments even though he was not aware of the fact that some of the figures had been altered and I could see no further reason of an affidavit concerning this matter. The whole testimony of Vollhardt came up, the whole proposition in its entirety.

DR. MARX: I am afraid I was not able to understand the translation. There must be something wrong with my ear phones. May I ask you to repeat it, Mr. Hardy?

MR. HARDY: I merely stated that I don't see the purpose of an affidavit inasmuch as —

THE INTERPRETER: Just a minute.

MR. HARDY: I state that I don't see the purpose of this affidavit inasmuch as the witness Vollhardt appeared here and was examined extensively by defense counsel. There is no necessity for further testimony. He has testified as to the experiments at Dachau and his knowledge of the reports and records and further testimony would be merely accumulative.

THE PRESIDENT: Do I understand counsel to say that this exhibit was offered on behalf of defendant Becker-Freysang.

MR. HARDY: And Schroeder.

DR. MARX: Primarily for Professor Schroeder but also for Becker Freysang because it deals with the same subject; but if there are misgivings against that I shall offer it only for Professor Schroeder. It belongs in the Schroeder document book.

MR. HARDY: I object to the admission of it, your Honor.

DR. MARX: Your Honors, this is not testimony of Professor Vollhardt. This is clarification and explanation of what material Professor Vollhardt,

had available and what preparations he had made by his medical associate Dr. Hermann and what material was available to this Dr. Hermann. If the prosecution says that they have no objection against the opinion of Professor Vollhardt being built on adequate foundation, then this document is perhaps not important. If that is not the case, however, then in the interests of an orderly conduct of my defense I consider it necessary to offer this document.

THE PRESIDENT: Has counsel been informed when the English translation of this document will probably be ready?

DR. MARX: Mr. President, I was informed by Captain Rice that this translation was being prepared and that it would be finished very soon. It would perhaps be advisable to wait until the translation is here.

THE PRESIDENT: Before passing on the objection of counsel for prosecution the Tribunal should be advised as to the statements made in the affidavit.

MR. HARDY: Your Honor, I don't need to see the English translation. I can readily see there, from looking at the German and the few words I know in German that this document here is just what I explained to the Tribunal that it is, and I object to it. If the Tribunal wishes to rule in it's favor, he may put it in in this form.

THE PRESIDENT: Mr. Hardy, that is not very much help to us, the fact that with your knowledge of the German language it appears to be not in good form. We haven't had the advantage of even seeing the German.

MR. HARDY: I didn't say it wasn't in good form. I state it is immaterial and the evidence has been heard from the witness on the stand and I don't see further reason for an affidavit of the witness that has appeared before this Tribunal.

DR. MARX: May I add something?

THE PRESIDENT: From the information given to counsel for defendant Schroeder it would seem probable that the affidavits would be available before very long.

DR. MARK: Yes, Mr. President.

MR. HARDY: If we are going to wait for the translation, I will withdraw my objection and let it be admitted.

THE PRESIDENT: In view of the withdrawal of the objection of counsel for prosecution, the affidavit will be admitted and received in evidence as Schroeder Exhibit 24.

DR. MARK: Schroeder Exhibit 24. The next document is Document No. 33 which will be Exhibit No. 25. This is a report by Dr. Med. Hermann about the experiments performed by Professor Vollhardt in his own clinic in Frankfurt on the Main. There were four doctors and one senior medical student who subjected themselves to these experiments. The Tribunal will remember that the defense was asked to submit this report to the Tribunal. I must assume that this has not been translated yet.

I should like to read some pages from this report, only a few sentences which the interpreters will be able to translate: Summary Report about Seawater Experiments at the Medical University Clinic at Frankfurt on the Main. "The seawater experiment, 500 cc. of seawater daily and 1,600 calories daily, was carried out carefully with regular urine and blood checks. The experimental subjects: 4 doctors and 1 medical student continued to work in their laboratories from 8:00 in the morning until 1900 hours in the evening and later." Then on page 2, the heading Subjective Findings: "During the first two days of the experiment psychic changes were not observed with the exception of thirst which slowly increased. On the third day the individuals, according to on their temperament, varied in their conduct. Vitality and depression were contrasted. Some were talkative, while others withdrew since it was unpleasant to them to talk. On the fourth day these symptoms could be especially easily seen." Then the next paragraph: "During the night from the fourth to the fifth day sleep was interrupted by vivid dreams. Some people indicated their dreams by cries and restless movements. On the fifth day there was a certain exhaustion with all the subjects. Movements were slow because of the dryness of the mucous membrane; only very little was spoken. But also the thought process was somewhat slowed down and concentrating ability was consequently reduced. The fifth experimental subject ended the experiment after 6 x 24 hours. In this case there was general fatigue; thirst had not increased to any considerable extent but was very unpleasant and monopolized the thoughts. During the whole course of the experiment there was not the slightest sign of any psychotic changes. In the cases of all experimental subjects, after drinking a slight amount of fluid, two cups of tea, there was immediate feeling of well-being. The average loss of weight was approximately one kilogram daily. After two days this was compensated for again. There were no after effects. Efficiency remained unchanged.

THE PRESIDENT: Has counsel for the prosecution examined the form

of this affidavit? The journal is not in the English language.

MR. HARDY: No objection to it.

THE PRESIDENT: That is Schroeder Exhibit No. 33.

MR. HARDY: Exhibit No. 25.

DR. MARK: The next document and the last document which I have to offer is document 34. This is an affidavit of the Chief Nurse Karin Huppertz, Berlin-Nicolasssee. During the course of examination of Professor Haagen it was alleged or rather the prosecution expressed the possibility that on the 25th of May, 1944, Haagen together with Professor Schroeder went to Natzweiler because the document said that Professor Haagen together with S. Now, with this affidavit of Chief Nurse Huppertz I want to prove that Professor Schroeder on the 25th of May, 1944, could not have possibly been in Natzweiler. The affidavit of the Nurse Huppertz reads:

It is very brief, Mr. President, and I should like permission to read it:

"Nurnberg, 30 June 1947. Affidavit. I, Chief Nurse Karin Huppertz have been warned that I will be subject to punishment if I make a false affidavit. I am informed that this affidavit is intended to be used as evidence before American Military Tribunal 1 in Nurnberg. I can testify with certainty that Professor Schroeder, on the 23th of May 1944, came in from Strasbourg, arrived in the evening, at 8:00 at Karlsruhe and left again for Berlin on the 25th of May 1944 in the evening. In the meantime he stayed in the home of my sister Mrs. Hella Kux in Karlsruhe, Folkstrasse 1; now Moltkestrasse 27. I can remember this fact so definitely because the reasons for his interrupting the trip was a birthday celebration in my family which was on the 24th of May. Professor Schroeder continued his trip to Berlin, on the 25th of May 1944 in the evening in the sleeper. My sister and I took him to the train.

Chief Nurse Karin Huppertz, signed by myself, because the signature was given before me. I ask that this document be admitted as Exhibit No. 26.

THE PRESIDENT: Has prosecution examined the form of this document?

MR. HARDY: Yes.

THE PRESIDENT: Let the document be admitted.

DR. JARL: Mr. President, I have completed the documents which I had to offer for Schroeder.

THE PRESIDENT: I enquired a short time ago if any other defense counsel had any document to offer and there was none then. Are there any now? Apparently there are none. I would ask counsel for defendant Bru-gowsky if he has received a certified copy of the record of trial in the Pohl case? I understood that had not been received.

DR. FLEMING: Mr. President, I gave this certified copy of the proceedings of the Pohl case to the Secretary General.

THE PRESIDENT: It has not yet been returned. That document was received before with the proper certificate, certificate of the extract of the testimony before the International Military Tribunal and it has not been received. Is that correct, counsel?

MR. HARDY: Your Honor, defense counsel, in that particular document, wasn't introducing an extract of the International Military Tribunal, but introducing a document used before the IMT, as a document certified by Mr. Vorwerk, Chief of the Document Center. My suggestion was merely that in lieu of sending to the Translation Section he could have taken the record of the IMT and save the translation proper.

THE PRESIDENT: I understood counsel but that document has not been returned to counsel in any form.

DR. FLEMING: I asked for the record at one time but can't remember at the moment through what channels I received it from in the micrographing section. Then I took out the pages which were important for my case and I crossed out the contents that did not interest me in order to make the work of the Tribunal easier and I put these pages into the document book and gave it to the defense center asking for a certification and the certification is in the hands of the Tribunal.

THE PRESIDENT: Is the certification in order?

MR. HARDY: As I stated, the document is an original document and certified by the Clerk in charge of the document center for IMT and the only problem now is the translation of that document and Dr. Fleming has sent the document of four pages to the Translation Division to be translated and as I explained it was unnecessary because the translation already exists from the IMT records and he could get the page that was introduced before the IMT and insert that and we would have the translation.

THE PRESIDENT: The original document of the certification for the Secretary of the IMT is now on file and translation can be furnished from one source or another in due time. I understand then there are no further matters for defense to be brought to the attention of the Tribunal? Counsel for defendant Karl Brandt is not present. I wonder if his documentation is complete?

DR. FRITZ: Mr. President, Dr. Servatius is in his office. I saw him a little while ago.

MR. PRESIDENT: Will you be kind enough, counsel, to call him and ask him if there is anything he would like to call to the attention of the Tribunal.

MR. HARDY: Yes, immediately.

THE PRESIDENT: I requested defense counsel to advise me if any defense counsel has further documents and receiving no answer I assume there are none.

DR. VORERK: Mr. President, I am empowered in the name of Dr. Servatius for the defendant Brandt to say there are no more documents to be offered in this case.

THE PRESIDENT: Very well, counsel. Nothing further to be offered by any defense counsel, the prosecution may proceed.

MR. HARDY: The prosecution is prepared to proceed if the defense counsel got the rebuttal books.

THE PRESIDENT: Have defense counsel the English rebuttal document books? If not will the defense advise the Tribunal. Are books available to each defense counsel?

MR. HARDY: This is prosecution document Book No. 19 which is the second rebuttal document book. We turn to page 1 which is document 654-PS which will be offered as Prosecution Exhibit No. 562. This document, your Honors, contains a discussion with the Reichfuehrer SS Himmler and his field headquarters in the presence of State Secretary Dr. Rothenberger SS Gruppenfuehrer and SS-Obersturmbannfuehrer Bender. This document shows the connections between the Reichfuehrer-SS and Ministry of Justice; there is a discussion which enlightens us on the connection between those organizations and proposals and regulations concerning a legal status and the treatment of Poles and Russians particularly.

The next document, Your Honors, is document NG-715 which is the entire document book No. 2 which was used in the Justice case, which are extracts from the Justice case containing laws and decrees imposed by Germany in the occupied territories. I have not given German copies of this to Defense counsel inasmuch as German copies were never prepared or introduced in the Justice matter.

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The Reichsgesetzblatt is official law of Germany and is available in every German Library and the OCC Library. The extracts and indexes are available to defense counsel and they can look up important sections. These are merely made available to the Tribunal to determine what laws governed in Germany during their occupation and particularly the status of inmates of concentration camps. The Tribunal should be interested in knowing just what laws will be applicable to the Russians, Poles, Czechoslovakians, and Hungarians and the purpose of these documents is to show the Tribunal what laws they were subjected to and in what manner they could be duly incarcerated in concentration camps, etc. I think my colleague Dr. Seidl has an objection.

DR. SEIDL: Mr. President, I object to the admission of the document which is NG 715. This is nothing but an index of a document book in the lawyer's case in one of these Tribunals. If one looks at this index which merely contains headings of laws one sees that document NG 715, which is called a document, is really the constitution, the so-called Weimar Constitution of the German Reich. Apparently this was offered in the Justice case. I am of the opinion that an index of a document book which gives only the headings of documents cannot be offered as evidence in another trial since it has no probative value. I therefore take the position that this document can not be admitted in evidence.

MR HARDY: And for the convenience of the court.

THE PRESIDENT: Counsel, the document consists of approximately 66 pages, and seems to me more than an index. But in any event the document is probable admissible for the Tribunal for its use but it appears to more than an index.

MR HARDY: The situation is that I have not supplied German copies inasmuch as the Reichsgesetzblatt is the official law in Germany and I supplied them with an index so they could check the reference and they have the reference of each English extract before

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you.

DR. FLEMING: Mr. President, you just said the document had more than 60 pages and was more than an index. I believe that is a mistake.

THE PRESIDENT: Counsel just explained that. Counsel for the prosecution explained that he had furnished German counsel with an index of the laws which are printed in our English document book. German counsel then by the use of the index may easily find in the Library here in the Palace of Justice the laws which are referred to in the index. Objection is over-ruled. Document is received in evidence.

MR HARDY: This document is NG 715, offered as Prosecution Exhibit 563. The next two documents are transcripts of interrogations of the defendant Hoven which were done by myself which I promised on this occasion- I will have to wait until defense counsel puts on his ear phones so he will hear my presentation before he enters his objection. These two documents are the transcripts of the interrogation of the defendant Hoven which I promised to introduce in rebuttal inasmuch as I used them in the course of my cross-examination of the defendant Hoven. The defendant Hoven at that time substantially substantiated this interrogation with his affirmative answers to my questions concerning the interrogations. I submit them now to show the Tribunal that these answers coincide with the affidavit which was executed by the defendant Hoven and that when the defendant Hoven was executing said affidavit he had ample opportunity to read it; in fact these interrogations will indicate to the Tribunal that I read to him passage for passage right straight through the affidavit; they were returned on the next day, which was the second document and had him sign it after reading it again and having a draft up of the first day corrected by him, and a final copy brought back the next day. He signed it and then at the same time also made corrections and

initialed each page. All these incidents are outlined in this interrogation and will substantiate the affidavit at issue here. I submit these documents No. 4068 and No. 4069 as Prosecution Exhibits 564 and 565 respectively.

DR. GAWLIK: Mr. President, I object. First of all for a formal reason, because the documents were not submitted 24 hours beforehand according to the ruling of the Tribunal. In view of the great length of these two documents it is not possible for me to examine them carefully in the short time. I just got them a few minutes ago and it is impossible to find out whether they are in order. The Prosecution had these documents since last October. Since January I have been objecting to the affidavit because Dr. Hoven does not understand English and I said I objected to the affidavit for that reason. The Prosecution could have offered these documents earlier. In any case they could have given me the German translation yesterday so I could examine it. In this short time, these few minutes, I am in no position to examine the documents and make objections. Furthermore, there is no indication that they are complete records. If these records are offered then I demand a complete record of all interrogations of Dr. Hoven be offered in evidence. I should like to remark that so far I have not seen the original at all. I must assume that the prosecution is offering these documents of the last day just in order to prevent my making objection.

MR. HARDY: No, Your Honor, the Prosecution is only introducing them to authenticate the affidavit and inasmuch as I have heard the remarks of defense counsel, he then has no further objection to the affidavit which is executed by Hoven and admitted into evidence and the Tribunal doesn't deem it necessary to certify to the fact that Hoven doesn't understand English; that is not the purpose to put them in; the only purpose is to show the Tribunal that the defendant was fully aware of the English language and understood what I talked about during the interrogation and defense counsel's 24 hour

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ruling applicable at this time is true, but certainly I have waived the 24 hour rule for the past four days because I haven't seen some of the documents of defense counsel yet.

THE PRESIDENT: Objection by counsel for Hoven is over-ruled and the documents are received in evidence, if the certificate is in proper form.

MR. HARDY: Your Honor will find the certificate on the last page of each interrogation.

MR. GAWLIK: Mr. President, I should like to call the attention of the Tribunal to several pages in this document, should I do that now or after the prosecution is finished?

MR. HARDY: That can be done in the argument, Your Honor.

THE PRESIDENT: That would be a matter for counsel to bring forth in his argument. If he desires to bring any argument in his brief or in oral argument he may call attention to these documents.

MR. HARDY: May it please Your Honor, during the course of the cross-examination of the witness Horn, who appeared here in behalf of the defendant Hoven, I asked him certain questions concerning the corruptness of the defendant Hoven. Horn at that time said defendant Hoven was not corrupt, etc, I believe the Tribunal will recall his testimony. Fortunately, a few days ago in examining my files I ran across an affidavit of Horn which was taken in 1945, immediately after the liberation of the Buchenwald concentration camp. This is document No. 4051 which I offer as Prosecution Exhibit No. 566 to rebut the testimony of the witness Horn on the witness stand in that this document which is an affidavit by the witness Horn of the 24 of April 1945, he states in the fourth paragraph---

THE PRESIDENT: Horn was a defense witness?

MR. HARDY: Yes sir.

THE PRESIDENT: Is that the same Horn as was a defense witness?

MR. HARDY: Yes.

THE PRESIDENT: I notice in the index the affidavit is dated 1946.

MR. HARDY: The date should be changed to 1945, Your Honor, in the index.

Wherein he states in the paragraph beginning "As a surgeon he came to Buchenwald—" which is a little above the middle of the first page. He states within that paragraph, and I quote: "At that time Dr. Hoven was regarded as a great murderer of prisoners, but I was taken out of the quarry by him and put into the hospital as a sick. He made this concession to the governing prisoners clique. Why? He was very corrupt and the prisoners knew it. They corrupted him in every possible manner; furniture, underwear, food." Then the affidavit continues. We offer that in rebuttal to the witness Horn's testimony.

THE PRESIDENT: We will hear from counsel for defendant Hoven, if he so desires.

MR. HARDY: And the original affidavit has a picture of the witness Horn on it taken at the time of the execution of the affidavit, which Your Honor can see is the same witness as appeared before this Tribunal.

This affidavit, the translation is sworn to, executed and sworn to at Buchenwald, Weimar, Germany, the 24th day of April 1945, by Raymond Givens, Lt. Col., U.S. Army.

DR. GAWLIK: Mr. President, I object to this affidavit. This is not the original affidavit. It is a translation as I see here.

MR. HARDY: That is right, Your Honor. It is a translation.

DR. GAWLIK: It is translated from German into English. In my German document book there is a notation which I do not find in the English. In the German document book it says, the note of the translator, "The above translation was prepared from an original written in poor English. No responsibility taken for interpretation." The translation from the original text which Horn gave — Horn gave the affidavit in German and it was translated into English, and according to the trans-

lator's note here the translation was so poor that this translator refused to take any responsibility. I must say I wondered very much at not finding this notation on your English document book, Mr. President. I am therefore of the opinion that this affidavit has no probative value at all, and we can't tell what Horn actually said.

MR. HARDY: This document is a translation of the original German document done by the War Crimes Group. They kept the original German and sent us the translation. It is sworn to - the translation - and is signed with the oath of the translator when it was taken. As far as the note of the translator in this department that is simply for defense counsel. If we didn't have that note, we wouldn't have noticed that it wasn't the original. It wasn't the original German, Your Honor; that is the purpose of it.

DR. GAWLIK: Mr. President, the affidavit does not indicate that this American officer was competent to take an oath.

MR. HARDY: He is a lieutenant colonel in the United States Army, Your Honor, Raymond Givens, the investigating officer that investigated Buchenwald and took these depositions from all the inmates.

THE PRESIDENT: I do not find the note referred to by counsel for defendant Hoven concerning the translation.

MR. HARDY: That note, Your Honor, is put on in order to have the document book complete. This English translation was originally translated back into German for defense counsel's document book. The people who translated that back into German made a note because it wasn't up to the standard they usually put out translations, and they wanted it understood that they were not responsible for this translation made in 1945. That note on the German translation they made was put there for defense counsel.

DR. GAWLIK: Could that be repeated? I don't understand it. The notation reads as follows, Mr. President. It is in my document book, page 58, the translator's note: "The above translation was prepared from an original written in poor English. No responsibility taken for inter-

pretations." Then the initials "G.G."

MR. HARDY: The initials "G.G." refer to George C. Grant on the certificate of translation and were put on in this department downstairs.

THE PRESIDENT: The Tribunal understands. I am not sure the defendant Roven does. Would you please make the explanation again, counsel, for the defense?

MR. HARDY: I am showing you this document in English, which shows in English the translator of the document does not want to be responsible for this English, that he did not translate it and it was in poor English and that accounts for the translation being what it is.

I am sure Dr. Pelckmann has something to say in this matter. I wish he would come and address the Court and we could clarify the matter immediately.

DR. GAVLIK: Mr. President, Horn made this statement in German and what you have before you is not the original. The original was in German. It was translated into English, and from this statement of this translator here I see that it is poor English and that this translator does not want to take the responsibility for the interpretation, and there is not proof that what you have in English, Mr. President, is actually a true translation of what Horn said. The prosecution should offer the original text, but that don't give us a translation which a translator here says is poor. You don't have Horn's statement, Mr. President.

THE PRESIDENT: Was there any original text of this affidavit in German, counsel?

MR. HARDY: I haven't seen it. I understand that this translation was sent to me certified by the War Crimes Investigating Team. They sent us a bunch of material they secured when investigating the camp. They kept the original German with their reports and I imagine it is on file in Washington, D.C. It would be impossible for me to find it. This is a translation duly certified by an officer of the U.S. Army. It is not for the translator here to be responsible for it. The lieutenant colonel said he is responsible for it and has sworn him in for the translation.

THE PRESIDENT: The document will be received in evidence. The matter referred to by counsel refers to the probative value to be given to the document, not to the document itself. Counsel is at liberty to call attention to this document in his brief on his argument. The Tribunal will consider then and give to the document such probative value as it deems it's entitled to have.

It will be received in evidence Document NO-4051 as Prosecution Exhibit 566.

DR. GAMLIK: Mr. President, I am asking this remark be put in the English document book, too.

MR. HARDY: It is not a part of the English document.

THE PRESIDENT: It is not a part of the English document. The Tribunal has ruled. That is the end of this matter.

MR. HARDY: Your Honor, the next document is NO. 3060 which is offered as Prosecution Exhibit 567. The last exhibit, the affidavit of Horn, was Prosecution Exhibit 566. Your Honor, if you will turn to page 118 of your Document Book you will find a certificate here from Councillor of the District Court wherein the witness Mennecke was tried and sentenced to death. And these photos, as stated in the affidavit, are photos which were found according to the Eichberg case among the possessions of Dr. Mennecke. They are in the envelope, the original photos, and they are marked "criminal photos, Concentration Camp Buchenwald, 25 November 1941".

These photos have been inscribed on the reverse side obviously by Dr. Mennecke. Dr. Mennecke admitted this at his trial. On these photos, as well as the original envelope are inscribed "criminal photos, Concentration Camp Buchenwald, 25 November to 5 December 1941." They were produced in court in Dr. Mennecke's case which is called the Eichberg case. According to Mennecke's statements during his case the persons shown are inmates of the concentration camp for whom he was making out registration forms. According to his statements in the same trial the date of the envelope is the date of one of his visits to Buchenwald for the purpose of making out these registration forms. They are signed and notarized in due form.

You will note that the next page of this document gives the names of particular persons and there are the translation of the inscribed words on the back of each picture; "hoarded immense amounts of food and what charges are against them."

Also in the Document 3060, you will note throughout that race defilement, anti-German agitation, Easter Jews, etc., are mentioned. If your Honor should care to see these photos I will pass them up to you.

THE PRESIDENT: The Tribunal will examine the photographs.

MR. HARDY: Then there is a description of the photos and the Councillor of the Court's affidavit attached to them.

This list that is attached to the Councillor's affidavit consists of 8 pages and gives 63 names with detail, and corresponds to the 63 inclosed photos which according to documents in the Richberg case were found among the possessions of Dr. Mennecke.

Those details given in the affidavit and the enclosed translation in your Honor's Document Book are copied from the inscriptions on the back of the original photographs. You will note the nationalities of some of the particular subjects, there is one an attorney from Prague, and several others.

THE PRESIDE: The exhibit will be received in evidence as Prosecution Exhibit 567.

JUDGE SLERINE: Mr. Hardy, may I inquire whether or not those exhibits 3060 and 2436 are to be offered as Prosecution Rebuttal Exhibits 567 and 568.

MR. HARDY: I am going to give 2436 number 568 as the document which runs with the other document actually. I am turning to that now, your Honor. This is document No. 2436 which is found on page 130 of your Honor's Document Book. I will mark it as Exhibit 568. This is an extract from the Mennecke trial and is duly certified by the Landgerichtsrat and the contents are obvious - I won't bother to read them, they verify the photographs which are introduced in the other document.

Now, if your Honor please, I have in the last page of this document book a loose document. Do you have that? Your Honor, this won't be offered as Prosecution Exhibit. This is really an addition to Beigleboeck Exhibit 34 which are the charts. We find on the back of chart A-29 some words written in German language in the handwriting of the defendant which I think are worthy of translation to be called to the attention of the Tribunal. On the back of chart No. A-29 there are German words therein. You will notice on line 19 there has been an erasure and this erasure, beginning on line 19 one inch from the left margin and extends three and three quarters inches.

In line 24 there was also an erasure beginning 1 1/2" from the left margin and extending 3". And it appears.....

THE PRESIDENT: I note counsel for the defendant Beiglboeck is not present.

MR. HARDY: Counsel for the defendant Beiglboeck is being represented by Dr. Hoffmann who was appointed deputy for Steinbauer in the absence of Steinbauer.

THE PRESIDENT: Very well, we will note that Hoffman represents Beiglboeck.

MR. HARDY: Line 19 which was erased was somnolence. The erasure in line 24 cannot be read. It is impossible to diagnose what it is. I want to introduce this translation of this particular graph for the Tribunal which is contained here and marked translation of Beiglboeck Document Exhibit 24, transcription of the long hand notes on the back of chart A 29 and the symptoms of the subject are noted therein and in the places where the erasures were done we have blank lines.

THE PRESIDENT: I notice your document which you refer to is 34, not 24.

MR. HARDY: 34 is what I said, your Honor.

THE PRESIDENT: I understood you 24.

MR. HARDY: Your Honor, also attached to this as part of Exhibit 34, is restoration of the original stenographic notes on the back of page C-23. You will recall Prosecution presented you with a translation of the notes, and this is the restoration given by Beiglboeck when on cross examination. For the convenience of the Tribunal we now offer restoration of the stenographic notes as they appeared after alteration.

DR. HOFFMANN: (Counsel for the defendant Beiglboeck): Mr. President, I should merely like to reserve the right to see the original of A 29 so that the defendant Beiglboeck can comment in his closing brief on this affidavit in connection with what Proso-

cution has now said.

MR. HARDY: I explained to defense counsel that he could have a representative of the Secretary General's office appear with him in an interrogation and the document could be presented to Beiglboeck at any time he requests the use of them.

THE PRESIDENT: That procedure will be followed.

MR. HARDY: If your Honor pleases, I have one

THE PRESIDENT: Counsel, it seems that this document should be identified in some way. While it may not be properly an exhibit I think better way is to mark it as an exhibit and then it will have a status as a supplement --

MR. HARDY: I can very conveniently mark it Prosecution Exhibit 569.

THE PRESIDENT: That is better way. Then it is formally part of the record and can be referred to.

MR. HARDY: Your Honor, I have one last document that I will distribute at this time. Sorry, your Honor, I will have to ask you to recess until 1:30. The German copies seem to be confused. They have left a copy of the German out which I shall refer to. I will have to check on it.

THE PRESIDENT: Very well, the Tribunal will now be in recess until 1:30 o'clock.

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AFTERNOON SESSION.

(The hearing reconvened at 1³⁰ hours, 3 July 1947)

THE MARSHAL: The Tribunal is again in session.

MR. HARDY: May it please the Tribunal, in connection with this next document I have to offer, I had the English -- or the German translation -- into the German --

THE PRESIDENT: There is some confusion on the ear phones. Wait until --. The confusion has subsided. Counsel may proceed.

MR. HARDY: If your Honors please, in connection with this next document, I have had it translated. The translation is before you of the German original document. I wish to introduce the photostatic copies I have here. The stencil was cut and, apparently, one page of the stencil has been removed from the Germany copies which is the page I wish to introduce so I have here three or four photostatic copies of the original exhibit in order. Defendant Hoven has one photostatic copy. He may have another if he wishes. Then I have two photostatic copies of the German which can be used by the court interpreters. However, I do not intend to read the document in its entirety. If they wish to use them they may if they so wish and return them to the Secretary General for the Tribunal's office copies.

This document now, your Honors, is NO-2148 which I offer as Prosecution Exhibit No. 570. I am only referring to that portion of the document which is dated 20 August 1942 which refers to reports of the deaths of political Russians. This document has an initial on it which is the initial "H" which prosecution contends to be the initial of the defendant Hoven. The document refers to the reports of deaths of political Russians and states that it may affect the

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saving of paper if the death reports on the political Russians were dropped, and I merely introduce this to show the position of the defendant Hoven in connection with the death reports issued from the camp and the fact he didn't consider it important enough to record these cases of death so that they might save paper.

THE PRESIDENT: What page of the documents?

MR. HARDY: You will find it on page 1 of the English, your Honors, at the top and it will be on page 2 of the photostat.

THE PRESIDENT: All right.

MR. HARDY: Your Honors, mimeographed copies of this are being made in German and will be distributed later.

That closes the presentation unless--

DR. GAYLIK: Mr. President, I have an objection to make to this document. This document does not constitute just one document. There is a number of documents which do not at all belong to one another. I ask to draw the attention of the Tribunal to page 1 and page 2. There you find the date of the year omitted.

MR. HARDY: You may note, your Honor, that I am only introducing the one letter that is a part of this entire document. Counsel may strike out the rest of the document if he wishes. I am only introducing the letter of 20 August 1942 concerning deaths of political Russians which bears Hoven's initials. The rest may be disregarded or he may use them as part of the document arguing it is his brief if he wishes. I am only introducing one portion of the document.

THE PRESIDENT: The date of that letter, you say, is August 1942? The date is omitted from the English copy.

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MR. HARDY: The date of the letter on the German is 1942, your Honors.

THE PRESIDENT: Did I understand you to say that this letter bears somewhere the initial "H"?

MR. HARDY: Pardon, Sir?

THE PRESIDENT: Did I understand that this letter bears somewhere the initial "H"?

MR. HARDY: Yes, the original document -- I will pass it up to your Honors if you wish to see it. That will be the second document on that page, the second page, your Honors, right in front of you now. That document there you are looking at now has the initial "H".

DR. GAWLIK: Mr. President --

THE PRESIDENT: No signature or initial is shown on the English transcript.

MR. HARDY: The English transcript says "signature illegible! Unless the translator was familiar with the case, they wouldn't know what initial "H" means, your Honors, and I am calling that to your Attention.

DR. GAWLIK: I also ask to draw the attention of the Tribunal to the fact that, according to proof, there was also a camp physician with the name of Hover, H O V E R .

MR. HARDY: That is in January 1943. The prosecution doesn't dispute any of those things. He may call that to the Attention of the Tribunal in his brief. The document is not objectionable. It is a German document and bears the initial of Hoven and it is material in this case. The only objection he may have -- he did not get it in 24 hours time and I will ask him to give us a reprieve for not giving the 24 hours notice.

THE PRESIDENT: The 24 hours' notice has been quite

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generally disregarded by the Tribunal for both the defense and prosecution in the last two or three days.

DR. GAWLIK: I am not objecting to that, Mr. President. Mr. President, if the prosecutor only submits a second page, I will submit the first page of this document as Hoven No. 21

MR. HARDY: I submit, your Honors, that I have introduced the entire document but I only want to call your attention to page 1 of the document which has Hoven's initial. He may call your attention to the entire document.

THE PRESIDENT: The entire document is admitted in evidence, counsel, as Prosecution Exhibit No. 570. Counsel for defense may use the document in anyway he desires. It is all in evidence.

DR. GAWLIK: Mr. President, it was an error on my part but do let me draw the attention of the Tribunal to page 3 of the English text. There you find an enclosure "November 1944" which not at all belongs to it because in November 1944 the defendant Hoven was already in prison. How could there be an enclosure dated November 1944 to a letter dated 1942. The other enclosures come from Department D III at Oranienburg. They do not belong to this document either. These are just a number of documents which have been attached to a letter of Hoven completely at random.

MR. HARDY: Any sections he feels not pertinent he may remove. Prosecution has no objection. We are merely relaying this letter with Hoven's initials.

THE PRESIDENT: Any portions of the document which are immaterial will be disregarded by the Tribunal.

THE PRESIDENT: Yesterday, counsel for defendant Sievers offered an affidavit of the defendant Sievers. The Tribunal sustained an objection on the part of the Prosecution to the admission of that affidavit. If counsel for defendant Sievers wishes to reoffer the document in evidence, the Tribunal will rescind its ruling and admit the affidavit in evidence and give it an exhibit number in accordance with the sequence of the affidavits on the part of the defendant Sievers.

DR. WEISBERGER: (Counsel for defendant Sievers) Mr. President, at the moment I do not have the document before me. With the permission of the President, I shall get it immediately and offer it to the Tribunal.

THE PRESIDENT: The Tribunal admits the document in evidence. The exhibit number may be added to the document and the Prosecution will be given a copy with the exhibit number. The document may be filed with the Secretary General as admitted in evidence with Sievers' appropriate exhibit number.

DR. WEISBERGER: Thank you, Your Honor.

MR. HARDY: It is my understanding, Your Honor, the Tribunal will adjourn until Wednesday to hear the legal arguments on the conspiracy charge.

THE PRESIDENT: The session on Wednesday will be a combined session of all Tribunals. It is not a part of the trial of Tribunal No. 1. The Tribunal will convene in back of this court room on next Wednesday, July 9th to hear arguments on the legal grounds presented with demurrers to the charge of conspiracy as an act contained in the indictment. The session will convene Wednesday morning at 9:30 o'clock.

MR. HARDY: Will all the defendants be present at that time?

THE PRESIDENT: The defendants will not be present. It is merely a legal argument and the defendants in all the trials could not be present in court as it is not a matter of submitting evidence, but arguing a pure question of law. The presence of the defendants in the court is unnecessary, according to the ruling of the Tribunal.

MR. HARDY: Then the Tribunal will again convene on the 14th of July?

THE PRESIDENT: The Tribunal will then convene at 9:30 o'clock on the morning of July 14th to hear the arguments of counsel in accordance with the procedure to be followed with arguments for the prosecution and defense. When counsel for the defendants have determined how long they will take for their arguments, if they will take the matter up with me sometime next week and I will be glad to hear from them.

DR. SAUTER: Mr. President, before the Tribunal adjourns, I should like to make an application to you on behalf of defense counsel. Tomorrow we shall not be able to talk to our clients because it is a Holiday, Saturday the prison downstairs is closed for defense counsel and that also applies to Sunday. A number of the defense counsel have expressed the wish that before the conclusion in submitting of their closing briefs and plans, they would once more like to discuss a number of essential points with their clients.

We would be grateful to you, Mr. President, if you could see to it that defense counsel could get into contact with the defendants of this trial - this trial only - either tomorrow morning or Saturday morning in order to enable us to conclude our closing briefs and final plans and in order that there be no delay.

THE PRESIDENT: I shall take that matter up with the prison authorities and arrange for some time, either tomorrow or Saturday, any reasonable time that counsel desires, for consultation with their clients as requested.

DR. SAUTER: Perhaps on Saturday morning or Saturday afternoon. There will probably be some difficulties tomorrow.

THE PRESIDENT: If Dr. Sauter and another counsel will come to my office when the Tribunal is in recess, we shall discuss the matter and I shall take it up with the prison authorities with the request of the Tribunal that they grant the request to permit such consultations as desired.

DR. SAUTER: Thank you very much, Mr. President.

DR. PELCKMANN (Counsel for defendant Schaefer.) I should one more like to remind you of an application, which I already put to you sometime ago. I have the courage, as well as the modesty, to declare the following quite openly. It is neither the inefficiency of the Prosecution nor the skill of the defense counsel, but the matter of a just matter, which with overwhelming logic demands that the defendant Schaefer be dismissed and he be released from prison.

I have fully understood the precaution taken by the Tribunal in not complying with my application in that regard in my opening statement. It was still before the submission of evidence on behalf of the defense. Even the very submission of evidence on the part of the Prosecution shows that the defendant cannot be guilty but there was still then the possibility that in the submission of evidence on behalf of the defense for the other co-defendants, he could be incriminated. Perhaps even his examination or cross-examination could incriminate him, even that could happen. I also understand why the High Tribunal has postponed my renewed application at the end of Schaefer's examination until the end of the entire submission of evidence. Theoretically, there could still have appeared incriminating evidence against the defendant Schaefer. We witnessed this until the very end. The gypsies appeared with considerable surprises of various nature, but the longer the submission of evidence of the sea-water case, after Schaefer's examination lasted, the more it became obvious that Schaefer had nothing at all to do with it. His name was not even mentioned, but with one single exception. The expert, Professor Ivy, mentioned his name repeatedly, always lauding him and giving him credit. He emphasized particularly Schaefer's rejection of the Berka method, his rejection of the experiments with that method and his reasons for it had been the only proper thing to do.

We feel the only correct thing and even without closing briefs or without pleas, it has become clear already today, Schaefer is not guilty.

I even maintain that no reasonable suspicion of having committed a crime has ever existed. For many months he has been robbed of his personal liberty, which he thought he had regained when the American troops occupied Germany.

I ask the High Tribunal to set an example with this case of Schaefer by recognizing the unconditional liberty of every individual, every German, especially after these periods of war, which have confused these concepts and which confusion still lasts until today.

The regulations of procedure of the Military Tribunal gives you, Your Honors, the formal authorization to comply with my application. Even if you cannot give a final decision now, please decide upon the combination of his imprisonment. We are still seven weeks away from the handing down of the judgment. During this time Schaefer will still be robbed of his most valuable freedom. It is a demand made by Justice that you decide the following matter and render justice. There is no suspicion at this time, there is no danger that the defendant will try to escape, there is no danger that he will in any way camouflage his acts or destroy evidential material or that he will try to influence witnesses, therefore, Schaefer should be released from prison.

THE PRESIDENT: The Tribunal has heard the application of counsel for Defendant Schaefer, which is a motion for the dismissal of the case, at the conclusion of all the evidence, this motion as those previously made on behalf of the Defendant Schaefer, will be taken under advisement by the Tribunal.

Is there any further matter to be called to the attention of the Tribunal?

The Tribunal then declares the evidence closed and the Tribunal will be in recess until Monday morning, July 14th at 9:30 o'clock when the arguments of counsel for the prosecution and the defense will be heard.

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Court No. I, Case I

THE MARSHAL: The Tribunal will be in recess until Monday morning.
July 14th at 9:30 o'clock.

(The Tribunal adjourned until 14 July, at 0930 hours.)

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9 July-M-FL-2-1-Gross (Int. Frank)

MILITARY TRIBUNALS I, II, III, IV & V
JOINT SESSION

Official transcript of a joint session of Military Tribunals I, II, III, IV & V, sitting en banc at Nurnberg, Germany, on 9 July 1947, at 0930, Justice Seals, presiding.

THE MARSHAL: The Judges of Military Tribunals I, II, III, IV & V. Military Tribunals I, II, III, IV & V sitting en banc are now in session.

God save the United States of America and these Honorable Tribunals. There will be order in the court.

JUDGE SEALS: This joint session of Military Tribunals I, II, III, IV & V sitting en banc has been called to hear arguments on the part of the defendants now on trial before Tribunals I, II & III in support of motion made by counsel of such defendants directed against the charge in the indictment proper, to which the defendants referred that are on trial, charging the defendants with conspiracy, committing war crimes and crimes against humanity as separate substantive crimes and arguments of the Prosecution on the same subject matter.

This en banc session of the Tribunals above named was not called primarily under Military Tribunal II as amended by Military Government Ordinance 11, amended by Military Government Ordinance 7, amendment bearing the date 7 February 1947, there being at this time no inconsistency by any Tribunals.

This session has been called to afford counsel for Prosecution and defendants now on trial before the Tribunals above referred to have an opportunity to present to the Judges of the Tribunal above enumerated their arguments on the question above referred to and to afford the Judges of the Tribunal an opportunity to hear the arguments of counsel on the question above stated.

Counsel for each side is allowed one hour to present his arguments. The Defense will open the argument and the counsel chosen to represent



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Tribunal I

MILITARY TRIBUNALS I, II, III, IV & V
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the defendants may divide his time, that one hour, between the opening and closing as he sees fit.

The Tribunal will now hear counsel for the defense.

CARL HAINSEL, on behalf of the defense,

May I presently apologize. I am afraid during the night I affected a swelling of my cheek but it doesn't impede my speech. It just looks ugly. However, there is an old writing in the Bible which says, "On the part of the body where you have sinned worst you are being punished." And there you are.

In Case I, III.....

THE PRESIDENT: Counsel, will you please, for the record, state your name as representing defense counsel in this argument.

CARL HAINSEL: Attorney Carl Hainzel, speaking on behalf of the defense counsels.

In Case I, II & IV, all the defendants are charged with a jointly planning the commission of war crimes and crimes against humanity.

In its opening speech in Case III on 5 March 1947, page 3 of the opening statement, the Prosecution brought out that part of its evidence referred to preceding events which had occurred in 1939, before the outbreak of the war. It thus wishes to show, it said, that the defendants were conspirators in a plot to commit crimes which were carried out after the outbreak of the war. There it reads and I quote: "But none of these acts is being brought under indictment as an independent crime."

The proposal was made to declare the indictment insufficient for legal reasons, in so far as it charges the defendants with the joint plan, with the conspiracy, for commission of war crimes and crimes against humanity, alone and as special points of the indictment, outside of other circumstances of the case resulting from Law No. 10 and international as well as German criminal law.

A plenary session of Military Tribunals I, II, III, IV & V was or-

MILITARY TRIBUNALS I, II, III, IV & V
JOINT SESSION

dered, before the decision could be reached about the proposal in Case III.

View point of the Defense

I. The Law to be applied.

1. Control Council Law No. 10.

In Case III, the Prosecution declared (page 24 of the German records): "These proceedings are based on Control Council Law No. 10."

According to its preamble, Law No. 10 was decreed, in order to "carry into effect the regulations of the Moscow Declaration of 30 October 1943 and of the London Agreement of 8 August 1945, as well as the basic law issued in connection therewith:

a. and "in order to create a uniform legal basis in Germany which will make possible the criminal prosecution of war criminals, and other offenders of this nature, excepting those who are being judged by the International Military Tribunal."

The Moscow Declaration of 30 October 1943 mentioned in the preamble of the Law, states, in the passage touching upon our question:

"Those German officers and men and members of the Nazi party who have been responsible for, or have taken a consenting part in the above atrocities, massacres and executions, will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments which will be created therein, without prejudice of the case of the major criminals, whose offences have no particular geographical localization and who will be punished by the joint decision of the Governments of the Allies."

At the Yalta Conference which took place on 11 February 1945, Messrs. Roosevelt, Churchill, and Stalin declared their "unbending will --punish all war crimes in a just and speedy manner."

This resolution was confirmed by Stalin, Truman and Attlee at the

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Potsdam Conference of 2 August 1945, On 7 June 1945 Judge Robert H. Jackson, appointed Chief of Counsel for the prosecution of War crimes submitted to the Allied Governments a plan for the practical execution of the Yalta resolution, on the basis of which the London declaration of 8 August 1945 was signed. This London Agreement and the "Charter of the International Military Tribunal" attached to it is the basic law, which, according to the preamble of the Law of the Control Council, No. 10 is to be given effect together with that law.

The London Agreement of 8 August 1945 declares that the four powers who had signed it, "act in the interest of all the United Nations." It contains the invitation for joining the pact which was followed by 19 nations. It was, therefore, the intention of the four great victorious nations, to act for the community of the nations in its entirety, i.e. to take an "Universal International Law" as a basis.

One of the men who, before the announcement of the London Agreement had negotiated there and had an influence on its formulation, is the Russian Professor A. N. Trainin, member of the Moscow Institute of Legal Science. In 1944, he wrote a book which was published, under the title "The Criminal Responsibility of the Hitlerites", at the Legal Publishing House ISU, USSR, Moscow 1944. In his statements about the IMT and International law in volume 41 of the American Journal of International Law, Quincy Wright, on page 41, describes the influence which the Russian legal scholar Trainin has had on the terminology of the Charter. The wording of Article II, Figure 2 in which a high political, civil or military position or one in financial, industrial or economical life is mentioned as a particular form of participation, obviously goes back to Trainin, because in his book, too, he maintains the opinion that not only the members of the Armed Forces and of the government, but also the capitalists and industrialists are burdened with a special responsibility. Trainin, however, emphasizes expressly, "The main problem in the field

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of punishability is the problem of guilt. There is no criminal responsibility without guilt."

This sentence conforms with the reason for the IMT Judgment in Chapter 9: "It is one of the most important principles that guilt, under penal law, must be personal guilt and that mass punishment is to be avoided."

I do not want to examine in detail to what extent Trainin's thoughts are crystallized out in Law 10. For the subject at hand it is merely important that in Trainin's works the Anglo-Saxon conspiracy is not to be found as an independent crime and that he did not incorporate it into the text of the charter.

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b) The text of the conspiracy provisions of Law No. 10:

War crimes in the narrower sense of the word and crimes against humanity, which alone are the subject of our discussion, since no indictment was made brought against the crime against peace (planning, preparation, initiation or waging a war of aggression), are defined in Article II under figure 1. Even a superficial comparison of this regulation with article 6 of the charter shows that the text of Law 10 bases on that of the statute, but that its specifications were enlarged.

For our subject whether conspiracies common planning for the accomplishment of war crimes and crimes against humanity is punishable, the above-mentioned differences of the texts are of no importance, for which reason no comparison is necessary. Such a comparison of texts is tiring if brought forth in such a presentation; it is easier to make it right away, on hand of the texts presented. It is, however, important for our problem that neither the charter nor Law 10 in the figures 1-b and c mentioned speak of common planning as a punishable separate crime, whereas both laws have in common that in their respective figure a, dealing with the crimes against peace, participation in a common plan or conspiracy for the accomplishment of one of the listed crimes against the peace, is expressly declared punishable.

With regard to both laws, we can state that by especially emphasizing common planning or common conspiracy the wording of figure (a) on the one page, is clearly set off in the text from the figures (b) and (c).

Correspondingly the I.M.T. took the viewpoint not to follow the indictment, which included war crimes and crimes against humanity, into the facts of conspiracy, but wanted to consider as conspiracy only the common plan for the preparation of wars of aggression. In this the I.M.T. had to deal with a regulation taken over into Law 10 and following the above mentioned figure (c) of the charter. According to this regulation leaders, organizers, etc., who have taken part in the conception or ac-

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accomplishment of common planning, should be responsible for all actions committed by any persons in the process of carrying out such a plan. The I.M.T. is of the opinion that this regulation refers only to the according to figure (a), punishable conspiracy for wars of aggression and that it defines this conspiracy in detail. In the view of the I.M.T. these words do not add any new special crime of conspiracy referring to war crimes or crimes against humanity to the crimes already listed.

c) Forms of complicity in Law 10.

Whereas in Article II the criminal facts are defined in subparagraph 1, the forms of complicity, which are possible in these crimes, are stated in subparagraph 2; in subparagraph 3 possible punishments are fixed.

In subparagraph 2, the following classes of persons are distinguished:

- a) the Main Culprit,
- b) the Accomplice, instigator or abettor,
- c) he, who "took a consenting part",
- d) "or was connected with plans or enterprises involving its commission",
- e) and f) are of no interest in this connection.

Now the attempt has been made, to use the above quoted wording of subparagraph d), to reinterpret in a roundabout way conspiracy as a special criminal action, into the facts of crimes, as defined in subparagraph 1; but conspiracy had quite obviously deliberately been omitted there in subparagraphs (b) and (c).

Against this the following reasons must be stated:

- (a) The system of Law No. 10 makes it clear beyond doubt, that the facts of crimes are exhaustively defined in subparagraph 1, whereas in subparagraph 2 only the forms of complicity in these crimes are defined.

- (b) In Article II, subparagraph (1-a) the English text defines par-

ticipation in a common plan or conspiracy with the words:

"participation in a common plan or conspiracy". This, then, is the legal definition of conspiracy in the legislative work of the Charter and also of Law No. 10. But in the same subparagraph (1-a) we have a few lines before:

"planning, preparation, initiation or waging a war".

In subparagraph (2-d) no mention is made of "participation in a common plan", but a completely different terminology is used, when it is said: "was connected with plans or enterprises". Here, then, only planning as such is mentioned, and as a form of participation in the preceding subparagraphs (a) to (c). Furthermore, it might appear to be of importance, that the French translation of Art. 6 of the Charter, has rendered "conspiracy" in subparagraph 4 by "complot pour l'attribution d'un quelconque des crimes...", whereas Law No. 10, Art. 11, 2-d has been rendered by a "participe a des plans ou a des entreprises".

- (c) No matter, whether the interpretation of the I.M.T. must be prejudicial for the interpretation of Law No. 10, Art. 2, which in its wording, as far as it is essential for our question, closely follows the Charter, this interpretation may in any case serve as a model.

2.

The existing Law beside Law No. 10,

especially Order No. 7.

In the Anglo Saxon sphere of law, Common Law exists beside the Statute Law. The question, which has not yet been investigated, presents itself, whether on the one hand Control Council Law No. 10, together with the Charter and the Statements of the Allied Statesmen does not render Conspiracy punishable regarding war crimes and crimes against humanity, but whether an American Military Tribunal might on the other hand recognize this fact as a basis for a demand for punishment in virtue of

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American Common Law.

American Common Law is to be administered without hesitation also in Germany by American Military Tribunals, as far as the defendants are members of the American Occupation Force. But for the defendants in these trials American Common Law does not apply.

a) After the surrender of the German Armed Forces in May, 1945, the four victor nations, to be quite clear: the four big victor nations, by no means one only, took over, "the supreme authority with respect to Germany."

(Statement of the Department of State, the Axis in Defeat, page 63.)

According to Explanations in the American Journal of International Law, volume 41, page 56, this declaration is distinct from the concept Annexation, as defined in International Law, in two points: First of all the fact, that several states took over Authority in Germany, and furthermore by the fact, that an annexation of Germany was expressly rejected.

The Nurnberg Judgment says in its Chapter "the Law of the Statute", in the second paragraph:

"The Statute was drafted in exercise of the supreme legislative powers of those states, to whom the German Reich had surrendered unconditionally, and the undoubted right of those countries to issue laws for the occupied territories, has been recognized by the civilized world. The Statute is no arbitrary exercise of power on the victor nations, but is in the opinion of the Tribunal, as will still be shown, the expression of International Law existing at the time of the creation of the Statute; insofar the Statute itself is a contribution to International Law".

It is not possible simply to argue: The Nurnberg Military Tribunals are American Military Tribunals; war is still on, the American Army is in occupied territory, therefore, the American Military Tribunal has to administer American Law, including Common Law." For us, however, in this place, "special circumstances prevail" because the Tribunals, who administer the law, are special Tribunals, the character of which I shall

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still amply discuss under C.

As I intend to introduce no more of the extraordinarily difficult questions of Law, which will still have to be decided in the trials, I do not want to express an opinion, whether we are still at war, or whether we are already living in a sort of peace, or in a warlike peace or a pacified war of a special kind. The Hamburg Professor of International Law, Dr. Rudolf Laun, has characterized the situation with the formula: "In Germany at the moment we have the law of war without warfare". (The Hague Rules for Land Warfare, Hamburg 1946, page 59).

In the opinion of the American Hans Kelsen (quoted in American Journal of International Law, Volume 41, page 51) the Supreme Authority in Germany was taken over by the victor nations, but their exercise of powers is permissible under international law, limited only by the rules of the law of Nations".

To make it easier to follow the further course of my arguments, I at once want to emphasize here, that the only deduction I want to make from these quotations, is, that the former occupying powers are bound by the rules of the law of Nations in the exercise of their power. I do not want to discuss here, what rules of International Law these are. Nor, do I want to go into the legal question for or against some of my colleagues, whether we still are in a State of War or whether there is no more war in Germany, which means, that there are no more belligerent powers either, and that above all Germany is no more a belligerent power, or whether there is still war in the absence of a formal conclusion of peace. To emphasize this expressly once more, I do not enter into the question, whether a debellatic (destruction by war) with all its consequences and with Germany's destruction as a subject of the Law of Nations has occurred, and what rights the Germans still possess at least in the form of "Costumes de la guerre", which all human beings in the Community of International Law can never be deprived of.

The essential point for me is the fact that the occupation of Germany was carried out together by the four victorious powers, who according to the Berlin declaration have confirmed again and again that Germany is to be neither annexed nor divided up but on the contrary to be maintained as an entity of which the political form is to be determined. Consequently, Germany is subject to the united occupation powers as represented in the control council, but not to the Russian, the English, the French, the American law as such. The individual occupying power did not transfer the law of its own country attached to its banners into this country. It has rather become an occupied country for which all the four occupying powers together claim, within the bounds of international rules and regulations, the right of legislation in order to carry out the actual occupation. This right, however, must first be established by the occupation powers and must not - in case it is not completely established - be supplemented by the law of the land of one of the four occupation powers, neither by an amplifying interpretation of Law 10 nor by a one-sided change of this Control Council Law by order of one of the occupation powers, unless it be that the four victorious powers have jointly and explicitly delegated such a right to one in their group.

The preamble of Law No. 10 expressly states that a uniform legal basis must be created, which expresses clearly the intent of the law that one of the four occupying powers, on her part, should amend the common legal principles.

For the sake of completion I consider it my duty to discuss in this connection Decree No. 7, which I will discuss once again in Section C. In the official gazette of the American Military Government this decree has been officially designated for the American zone as such and was published 18 October 1946, but not in the other occupation zones. According to its title the decree deals only with the "constitution and competence of certain military courts." It does not deal with material criminal law nor with modern criminal law; it does not deal with a

fundamental change of Law No. 10 issued by the Control Council within the limits of its authority. In this decree it is stated that "the special military courts have the authority to punish persons" "who are accused of a punishable act designated as crime in Article II of the Control Council Law No. 10 including conspiracies to commit any such crimes." To mention conspiracy in this text can be interpreted by the professional jurist, who knows international law, only in such a way that the courts are to have the authority for the charges cited in Law No. 10 including not in addition to -- the conspiracy charges. This, naturally, is the case only insofar as Law No. 10 defines crimes and a punishable conspiracy which it does in Article II, paragraph 1-a, where it deals with the conspiracy for the preparation of aggressive wars. It is impossible, however, to perceive in this decree - valid only for the American occupation zone - a fundamental alteration of Law No. 10 and a change of its definition of punishable crimes. This would indeed lead to the introduction into the American zone of a war crime concept which is completely different from that in the other zones. The international relations between the four victorious powers would thereby be changed by the unilateral action of one of the four powers. The legal redress of the victorious powers among each other as provided in Article IV of Law No. 10 would be affected. A defendant handed over to the American occupation power by another power for punishment according to this article would not be punished according to Law No. 10, but according to an amendment which alters this law in a most essential point. Indirectly, by way of a seemingly insignificant procedural regulation the material criminal law itself would be rendered more stringent. This means that an inner-American legal institution - by violating the principle "Nullum crimen sine lege" to be discussed in the next chapter - would be made into an institution binding under international law, which is legally unjustifiable, because this procedural regulation lacks recognition by International Law.

II.

"Nullum crimen sine lege."

Let me offer reasons for my proposition that the Nuerenberg Military Courts cannot refer to American Common Law as a base for their claim for punishment on account of conspiracy with regard to war crimes and crimes against humanity, not even based on Decree No. 7. I want to base my contention on several other aspects.

We have to admit and we can do so without hesitation, that international norms have not been laid down with the exactness demanded by the continental jurist of his codified laws. But one thing we can and must demand of International Law as well; a clear separation between what is desired and what has been established as law. It must be said once that legal feeling does not exist at all. There is only a legal consciousness, a sense of law and this sense of law is subject to human mental processes and must be separated sharply from instinctive feeling. The feeling by which a judge may be moved may be anger, contempt, love for humanity, feeling of responsibility, voice of his conscience. But with regard to the basis of this feeling he must hear, see and decide with a clear, critical mind. I have given reasons for these propositions in detail in my book about "The Essence of Feelings" (published 1945). "Only by way of rational deliberations does one arrive at a correct application of a complex of norms, established as law by the intellect." (p.152) There I have also quoted Pascal: "Three degrees of latitude knock over the whole jurisprudence." (pensees, par. 319).

More than three degrees of latitude lie between the continent and America.

I can refer to one of the recognized texts about conspiracy, to Francis B. Sayre's essay in the Harvard Law Review, Volume 35, where on page 427, he says about conspiracy: "It is utterly unknown to the Roman Law, it is not found in modern Continental codes, few continental lawyers ever heard of it. It is a fortunate circumstance that it is not

encrusted so deep in our jurisprudence by past decisions of our courts that we are able to slough it off altogether."

The principle of "Nullum Crimen Sine Lege" is called a general principle of justice (Chap. 5, par. 6) in the first place, by the judgment of the I.M.T. If one wants to apply this principle to the Nurnberg proceedings and if one wants to give it a living sense, then it cannot possibly be enough to state that somewhere in this world something was pronounced punishable, and therefore later an act could be punished according to that in a totally different part of the world.

I wish to point out here that in this place I only intend to refer to substantive law, not to questions of legal procedure, not the question of the competency of the Military Tribunals, and especially not to the question whether they are also competent to judge acts committed before the events took place that led to the occupation. Even if one answers all these questions in the affirmative - and I must ask that it should not be concluded from this that I do - one has not admitted that a Military Tribunal might be competent to judge any foreign national who comes into their venue according to the substantive penal law valid in his own country.

I do not wish to treat this group of questions in greater detail because it will have to be dealt with by several of my colleagues in connection with their own, special cases. I here only state that the victorious powers have, based upon their rights as occupying powers, created a legislation in which they have excluded unmistakably and undisputably the possibility to apply any national law valid in the one or the other of the victorious countries, which would violate the principle *nullum crimen sine lege*, referred to earlier. This principle has solemnly been confirmed for Germany by the Military Government Law No. 1, Article IV, No. 7. According to this, "an accusation can only be brought, if the Act has expressly been declared punishable by a law valid at the time when the Act was committed."

The American Common Law was not valid here before the beginning

of the American occupation of Germany. Consequently, even a purely American Military Tribunal could not apply it retrospectively.

I personally quite understand the sound legal idea that conspiracy should be a punishable offense.

I should like to ask the High Tribunal to consider the critical comments of Francis B. Sayre, Professor of Law at the Harvard Law School about criminal conspiracy. I shall take the liberty to submit excerpts from his work in the Harvard Law Review, Volume 35, together with other literature, which I could only now procure from abroad. He berates conspiracy as a doctrine so vague in its outlines and uncertain in its fundamental nature.

Maybe it will happen, and I certainly hope so, that we are going to learn a lot from American, and that we get a lot of good from there, but up to now "conspiracy" has not yet been imported. There are still international customs barriers against such an importation, even an international ban on imports.

M. Dommedieu de Vabres, Judge at the International Military Tribunal has given a lecture about the Nuremberg Trials in March of this year before the Association des Etudes Internationales and the Etudes Criminologiques. In this lecture he said about conspiracy: "The wide conception of the 'complot' or conspiracy is peculiar to British Law." He adds: "The danger of such incriminations is that the door is opened to arbitrariness. The accusation of conspiracy is indeed a weapon preferred by tyrants. When Hitler wanted to strike at his political opponents, he accused them of having conspired against him."

One will have to admit in agreement with the highly esteemed master of law, Professor Dommedieu de Vabres that in these sentences no acknowledgment of "conspiracy" as an institution of international law is contained, but that these words from such a prominent man deny the effective validity of such a legal principle in international law.

III.

"Conspiracy" in Continental Law.

The Prosecution has repeatedly referred to the Hague Land War Convention.

The Hague Land War Convention has been published in the German Reich Law Gazette, in its form of 1907. It was signed, apart from others, by the United States, France, Great Britain and also Germany. Not only scholars of international law, but also decisive courts of justice have recently frequently discussed the question whether the Hague Convention is to be regarded as the fundamental law for occupied Germany. The Superior Court of Zurich in its decision of 1 December 1945, found (Page 86 of the Schweizerische Juristenzeitung 1946) that the Hague convention is still valid today for the relations between occupied Germany and Switzerland. It states in its essential parts:

"The science of international law essentially distinguishes between two stages of conquest: The warlike occupation (*Occupation de Guerre*, *Occupatio Bellica Transitoria*) and the Annexation (*Strupp* *ibid.*, Page 135 and 297; von Waldkirch, *International Law* 1926 P.354 and 116; Sauser-Hall, *Occupation de Guerre et les Droits Privés*, in the Swiss Almanac for International Law, 1944, P. 50; According to Sauser-Hall, the primary Stage of 'invasion' is included which is, however, subject to no other Rules than the Occupation, See Page 50, Note 1.) It is clear that during the occupation the treaties concluded by the occupied state still remain in force, but that, on the other hand, as a result of annexation, conquest of Territory, the International Treaties of the annexed state become void because one of the contracting parties has ceased to exist.

A) When investigating the question whether we have an annexation, the requisites of such an annexation must first be clarified. First of all it is necessary that the territory to be annexed be completely occupied and that any resistance of the opponent or his ally be completely extinct, (Sauser-Hall *ibid* P. 61/62; von Waldkirch *IBID* P. 116; Strupp P.

135) this pre-requisite has been fulfilled in regard to Germany, at least since Japan's capitulation.

This however does not constitute an annexation in itself but only provides the pre-requisites for it. As a result of statements in literature of international law, it can not be doubted that this must be coupled with the will for annexation, which generally must find expression in an outright declaration of annexation.

The occupying powers have not expressed the will, so far, to retain the occupied territory, to rule it permanently with the exception of some border provinces. They exhibit no inclination to transform the body of Germany into English, French, American or Russian territory. Their administrative policy points in an entirely different direction.

B) If no annexation exists, then the present state of affairs can only be one of warlike occupation, even if actually the act of debellation has already taken place. Therefore only this question still exists, whether nevertheless, the International Treaties with Germany have become void, because, unlike a normal warlike occupation, Germany has lost her government and thus her character as a state as a subject of International Law.

It is true that the Doenitz Government surrendered unconditionally and was deposed because of imprisonment. The occupying powers do not intend however, to deprive Germany of its Statehood because of this, but they merely wanted to remove her government. That was the main objective of the entire war. As far as possible therefore, they have again admitted German governments and expressed by this that they do not consider German state authority as extinct.

Some of the scholars of international law, such as Professor Sauser-Hall of Geneva, find that in Germany we have a sort of trusteeship occupation. This relation of trustee also finds expression in an English proclamation. I shall take the liberty to submit the detailed arguments of Dr. Sauser-Hall together with comments of Dr. Ernst Schnoesberger, Washington. I should like to make the request here already that the

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High Tribunal accept the statements of several colleagues especially in this connection, which statements shall arrive at the latest during the next two weeks.

According to article 43 of the Land War Convention, the legal powers of the occupant shall be executed with regard to the law of the land as far as there is no compelling obstacle.

Law Number 10 deals in one place with the national law of the land. It says in article II, 1, c, at the end, "Regardless whether they violate the national law of the country in which the act has been committed."

This half-sentence follows the regulations concerning crimes against humanity. From the punctuation of the German text it is not quite clear whether the half sentence quoted refers only to the persecution for political, racial or religious reasons, since a semi-colon is put in front of the word "persecution", or whether the emancipation from the law of the country is also to refer to the previously mentioned "crimes against humanity." Semi-colons have their destiny, as we know from the history of the origin of punctuation of the charter used by the IMT. But this problem is not to be discussed within our limited question since Paragraph c does not contain Conspiracy as an independent crime. We only have to decide, whether this emancipation from "the national law of the country" means a principal breach with the above-mentioned principle from sub-paragraph 43 of the Hague Convention. Such a principle breach and thus alteration of the existing International Law can not be seen in the above quoted final regulation of sub-paragraph c. According to the meaning and, above all, considering the semi-colon contained in the German text, it is only of importance for such regulations of national law, which render punishable acts which at the same time constitute persecutions on political, racial or religious grounds, not liable to punishment or subject to an amnesty out of political, racial or religious prejudices. Such national laws covering political, racial or religious persecutions should not be considered under sub-paragraph c, not, because - in the sense of the Hague Convention about Land Warfare - they are national laws, not because they are "national law" of the occupied country, but rather because they are a wrong according to International Law, which originated in the liberated country by reason of a legislation machinery which in the meantime has come to a standstill.

Paragraph 43 of the Hague Convention would enable the American

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Military Tribunals to base their verdict upon Conspiracy as a punishable offense in the case of war crimes against humanity, if German law had known this crime previous to the occupation.

It is one of the first rules of evidence all over the world that a fact which seems indisputable to all need not be proven.. There will hardly be one among the high judges of the Court who has met so far a German jurist who would call conspiracy to commit war crimes and crimes against humanity a recognized crime in German Penal Law. But we also have tried an extension of the circle of those participating in a crime and responsibility for a crime beyond participation in the narrower sense in our Penal Law. With us the conception of the complot and of the gang have arisen as a scientific doctrine without general recognition or even general legal realization.

According to German legal theory the gang is constituted by an agreement to commit a series of undefined offenses. The conception of the gang consciously avoids an individualization of crimes. It is a crime in itself, even without the planned crime being executed later. It is an independent crime apart from the offense possibly being executed later by the gang and resembles the Anglo-Saxon conspiracy like one egg the other, as far as an American egg can resemble a continental one, like the egg of an ostrich resembles the egg of a lapwing. The ostrich lays his giant egg freely into the landscape; the lapwing egg can only be hatched in a carefully guarded nest. The continental conception of a gang can only exist if it is surrounded by a "nest" of positive rules and if it is clearly defined what is to be protected by the law (Rechtsgut) against the gang. According to continental codes the war crimes and crimes against humanity listed in subparagraph b and c of II, 1 of the law No. 10, do not belong as such to these rights to be protected (Rechtsgutern). A gang can be punished only as far as the German Penal Code provides for

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punishment in the case of murder according to paragraph 49b if "the crime of murder has been agreed upon with another person."

In order to be complete I should like to deal briefly with the question whether it could be reasoned that conspiracy to commit war crimes and crimes against humanity would be punishable, if one of the defendants has committed such a crime in an occupied country, where this is a punishable offense. We are here dealing with International Law and have to consider questions which become apparent for any jurist when the conceptions of territory principle personality principle, distance principle are mentioned.

It is easier to ask this question than to answer it, and it is easier to answer it than to prove the answer right. I dare to answer, in accordance with Sayre whom I have just quoted, that no continental law, that is, no law valid in any country occupied by Germany during the war, including the North coast of Africa, knows the conspiracy to commit war crimes and crimes against humanity as a punishable offense. I shall bring further proof in written submissions.

B. The Special Position of the Nurnberg Military Tribunals.

I hitherto expounded on the assumption that the High Courts before which it is my privilege to speak are American Military Tribunals and not perhaps something else. I should not be so bold as to breach this subject, were it not for regulation number 7 of the American Military Government, designating the appointed Nurnberg Law Courts in their heading as "Certain Military Tribunals" and in article II as Certain Tribunals to be known as "Military Tribunals."

These "Military Tribunals" of a special kind have been in session since proceedings were concluded in IMT, they are located in the same rooms and run along lines of similar rules and regulations, with the remarkable difference however, that American citizens alone and not members of other victorious nations as well function

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as judges. These are, however, not American officers, but article II of the above-mentioned regulation states expressly that "all members and deputizing members must be jurists who have been admitted to the highest courts of the United States, that is, the territories or the District of Columbia, or the Supreme Court of the United States, for a minimum of 5 years." There follows from this appointment of qualified personnel for these courts that special knowledge in the highest questions of right and humanity was to be made condition in the case of these judges, not however military rank.

The prosecution concluded its opening statement on 6 March 1947 in Case III as follows: "Thus the true meaning of these proceedings exceeds by far the mere question of the guilt or innocence of the defendant. These proceedings turn to the ethical conception of the civilized world and impose on the peoples of the world the obligation to accept as a standard the norms which are applied here. This court, although internationally composed, is an American court. Obligations resulting from these proceedings are thus particularly binding for the United States."

Without wishing to be accused by the gentlemen of the prosecution of foisting their word in their mouth, I should yet like to somewhat reverse the last but one sentence: I wish that I be permitted to say: Although this is an American court, it was composed on international lines. It was composed on international lines, that is, it was given international tasks. To all intents and purposes these tasks should have been tackled by a court composed of international members, as the I.M.T. We now experience it also in other cases, as in politics on a large as well as on a small scale, that powerful American, the United States of America, have to step in where the representatives of the Old World fail for whatever reason. Here in these High Courts, the United States of America have undertaken to fulfill such obligations as are the duties of the entire mankind.

"The United States cannot escape the challenge of this responsibility" were the words of the counsel of the prosecution; further, on page 109 of the German record of 5 March of Case III. "In Nuremberg we can only put a fraction of this into practice. Yet, Nuremberg must become the symbol—not one of revenge and smug complacency, but one of peace and understanding among the peoples of the nations."

These are noble and beautiful words, yet they indicate beyond a doubt that the law on which sentences shall be passed be international law, a law uniting all nations and placing all nations and its members under obligations, and not for instance Anglo-Saxon national law. These proceedings turn to the ethical conception of the civilized world and imposes on the peoples of the world the obligation to accept the norms recognized here as a stand, are the words of the prosecutor. These norms, however, can only be taken as a standard, if they can be proved either in accordance with international law or by virtue of the international legislation in the criminal law of all nations, above all those whose members will be affected by the sentence. As the authors and signatories of Law No. 10 and the London Charter classify conspiracy for aggressive warfare as definitely punishable, but omit to threaten with punishment in the case of conspiracy concerning war crimes and crimes against humanity, they hereby indicate their definite intention to punish conspiracy as an independent criminal offence only in the first case, namely as preparatory to aggressive warfare. This intention, as it is so clearly defined, can only be modified again by a common action of that legislative body which proclaimed the legislative work of the Charter as well as of Law No. 10 and Law No. 1.

As a young law student, I was introduced to the fundamentals of international law by the old Professor Westerkamp in Marburg. Professor Westerkamp used to ask the candidates during examination, "What was the Battle of Koenigsgrätz?" In non-German historical science, the Battle of Koenigsgrätz is generally referred to as the Battle of Sedawa, which

in 1866 decided the war between Prussia and Austria. At the time both states belonged to the Federation of German States, whose members had obligated themselves not to go to war with each other without previous appeal to the Federal Council. That learned man expected an answer to his question: "The Battle of Koenigsgratz was an impossibility according to International Law." If the long since deceased professor were to appear once more in my dreams tonight -- I assume you all know the dreams about the examinations which still frighten us now and then, after we have long since grown out of the stage of examinations -- and if he were to ask me what constituted an absurdity according to international law, then I should answer: "The conviction of these defendants because of an independent conspiracy in connection with customs of warfare or humanity."

It is true I do have to admit that absurdities of International Law endeavor, with particularly stubborn persistence, to become realities. I must also admit that possibilities of International Law exhibit a similarly great weakness of realization. But despite the numerous skeptical statements that man does not grow more intelligent, I still believe that at least sometimes, if not always, some sudden progress is yet to be achieved and that humanity does learn something new. I may quote once more a passage from the opening statement of the prosecution of March 5, 1947: "Guernburg is a symbol, that is, it is to become a symbol. At this time it is still a task, a demand, a hope of the whole world."

Shakespeare's Hamlet says: "The world's out of joint."

Hamlet -- and that is a fact frequently overlooked -- was a jurist. He studied law at Wittenberg. His mother requests his Wittenberg fellow-students Rosencrantz and Guildenstern to cheer him up; that attempt fails. Hamlet continues: "Sorrow and sorrow that I had to restore the world." Hamlet did not desire to assume the task of restoring the world that had broken to pieces. Like most of his colleagues

he had too many misgivings. But we, the jurists of today, are not spared this task. We have to accept the heritage of Hamlet. The theologians, who up to the 18th century had the responsibility of maintaining world order, no longer command the loyalty of all humanity. Up to the 18th century the world was considered as God's creation, even for the scientists. Based on the principle of the legality of divine right of princes it was possible to restore the world for another century in 1815 at the Congress of Vienna. Since then, however, science rules; it bases its theses merely on the experiences of this world, no other ties beyond our world are left. This spirit of science together with Maja -- the substance -- has begotten that unruly giant of modern technique, an infant that knows no limit and that will burst the globe itself into pieces if we fail to find restraining norms within International Law, the law of humanity. Maastricht is the gate to this new period of law. The question before this High Tribunal as it stands today -- and there will be new problems in days to come -- is whether it is necessary to restore the world with Anglo-American legal concept of conspiracy in regard to war crimes and crimes against humanity or whether it is possible to succeed without it. Above I compared the conspiracy to an egg. It was not, to use the terms of the proverb, my intention of laying a cuckoo's egg in the laps of the High Tribunal. I rather tender the hope that in the hands of the judges the egg will be converted into the egg of Columbus.

GENERAL TAYLOR: Your Honors: The jurisdictional question set down for argument today before the full bench of judges is presently involved in three of the cases pending before the Tribunals -- Case No. 1, the Medical Case, Case No. 3, Justice, and Case No. 4, WVHA.

The conspiracy counts in Cases 1, 3 and 4 are very similar in their theory and structure; in each case, Count 1 of the indictment is entitled "The Common Design or Conspiracy", and the design or conspiracy charged in each case is a design or conspiracy to commit war crimes and crimes against humanity set forth in subsequent counts of these indict-

ments. In all three cases, therefore, the indictments charge that the conspiracies were consummated and resulted in the commission of the substantive crimes of the substantive crimes set forth in subsequent counts.

The only difference between the conspiracy counts in these three cases is that the count in Case No. 1 is coincident in time with the substantive counts, that is, the conspiracy count and the substantive counts, alike, cover only the period of actual hostilities from September 1939 to May 1945, whereas the conspiracy counts in cases 3 and 4 cover the entire life of the Third Reich from January 1933 to May 1945.

However, the substantive counts in cases 3 and 4 are confined to the war period, from September 1939 to May 1945. The conspiracy count has been extended back to 1933 in these two cases because, the prosecution charges, the substantive crimes charges to have been committed during the war arose out of and were the direct result of certain acts of the defendants committed at an earlier date. Thus, in Case No. 3, it is charged that the judicial machinery of Germany was distorted in such a manner as to make possible, and directly cause, the substantive crimes committed during the war. Likewise, in Case No. 4, much of the organization of the RVHA was established prior to the war, and this organization carried out the substantive crimes -- murders and other atrocities -- which are charged as having been committed during the war. No such problem is raised in Case No. 1.

I should like to approach the jurisdictional question which is being argued today by a few general observations about the concept of conspiracy. It is as venerable as well as an ancient concept in the jurisprudence of England and the United States, and finds its roots in English common law. The Anglo-Saxon concept of conspiracy has been developed and refined - and perhaps over-refined - in a multitude of judicial decisions stretching over several centuries. Legal concepts, analogous to that of conspiracy, are by no means unknown in continental law, but it is true that these concepts have not been as widely accepted or as fully developed in continental jurisprudence, and some continental lawyers tend to look upon the concept of conspiracy with some measure of suspicion and disapproval. The reasons for this are not far to seek, and these reasons, I think, will help to illuminate the rather divergent points of view which are being expressed in this courtroom today.

The classical definition of conspiracy at English common law is that it is a confederation to effect an unlawful object, or to effect a lawful object by unlawful means. Within the scope of this definition, conspiracy is very little more than an elaboration of the law of attempts, in cases where the conspiracy was unsuccessful in attaining its object, or of the law of principals and accessories and accomplices, if the conspiracy succeeded in attaining an unlawful object. Within this sphere, the law of conspiracy is really just another manifestation of the very familiar problem in all legal systems of how closely or in what way an individual must be connected with a crime in order to attribute to him, in a judicial sense, guilt. To be sure, difficult questions often arise in this, as in all other fields of law. But the field itself is not more controversial than many others.

However, over the course of years there have occurred, both in English common law and in the continental law, a number of efforts to apply the doctrine of conspiracy to acts which, if committed by a single person, would not have been indictable or, in a judicial sense, unlawful. It was argued in these cases that, although the object of the conspiracy might

be lawful, and indeed the means themselves lawful if used by a single person, nonetheless the policy of the law forbade the reaching of the attempted object by means of a confederation. To be sure, in most such cases where the doctrine of conspiracy was held to apply, there was some element either of deception or of force, or threat of force, in the means used by the conspirators. However, it became apparent that such extensions of the law of conspiracy, unless confined within narrow bounds and within the bounds of well-established and well-known prior adjudications, tended to bring criminal law into a vague and dangerous field where no man, acting in concert with others, could be sure whether his actions might not subsequently be held to be criminal by virtue of the mere fact of confederation, even though the means used and the object itself would have been lawful had he pursued them by himself. It is this tendency in the law of conspiracy which, I am sure, has provoked fears and doubts both among continental jurists and among distinguished exponents of Anglo-Saxon common law, such as Wharton, which I have read, and the article by Sayer referred to by Dr. Haensel, which I have not read.

It is important to point out, therefore, that none of these questionable and perhaps dangerous developments of the law of conspiracy are in any way involved under the London Charter or under Law No. 10, or in any of the three cases before these tribunals in which this jurisdictional question is raised. Neither one, neither the London Charter nor these indictments, seeks to impose criminal liability for conspiring in pursuit of a lawful objective. On the contrary, the conspiracies involved in these cases are conspiracies to commit acts well-established as crimes at international law, under the specific language of the London Charter and Law No. 10 and, in most cases, under the penal law systems of all civilized countries. Therefore, the importance of the concept of conspiracy in the cases before these tribunals relates only to the necessary degree of the defendants' connection with acts which were, in fact, committed and which were clearly crimes, in order to

establish the defendants' guilty participation in those crimes. Viewed in this light, I think it will be clear that many of the aspersions and doubts which counsel for the defense have cast upon the basic notion of conspiracy, and which indeed might have some point if we were seeking here to apply the doctrine of conspiracy to acts and objectives lawful in themselves, in fact have little weight since we seek here to apply the doctrine of conspiracy only in its more limited and classical meaning.

In dealing with the doctrine of conspiracy today, therefore, we are dealing only with the question of what degree of connection with an act, acknowledgedly criminal, a defendant must be shown to have had in order to attribute to him guilt. In this field Anglo-Saxon jurisprudence uses the terminology of principals and accessories, accomplices and confederates, conspiracies and attempts. In other judicial systems these words and other words are used. There are some differences of importance between the various judicial systems, but the basic purpose of these concepts, such as accessories, accomplices, conspirators, etc., is common to all systems. That purpose is to insure that the man, who in the United States we would call the "trigger man", is not the only man who can be held judicially answerable, if other persons were substantially connected with the commission of the crime.

I think it would be useless and inappropriate today to labor the distinctions and subtleties which have been woven around the concepts of accessory and accomplice and conspirator, etc. in Anglo-Saxon law. In some cases these distinctions are very refined and surely there is much over-lapping between the concept of conspiratorial guilt and the guilt of a confederation of principals and accessories. With all deference to the learned judges who have decided cases in this field, and to the text writers who have commented on those decisions, I do not think that these refinements and distinctions have often been very clear to these distinguished jurists themselves.

Today it is much more important, I think, to keep clearly in mind that we are applying international penal law, and that we should not

approach these questions solely from the standpoint of any single judicial system. International law has, in recent decades, made substantial strides in the development of substantive international crimes, and this development has flowered into such attempts at partial codification as the Hague and Geneva conventions, the London Charter, Law No. 10, and the more recent resolution of the United Nations with respect to the crime of genocide. But while these substantive crimes are now acknowledged and accepted as such in international law, we must recognize that international tribunals vested with jurisdiction to punish such crimes are relatively new. Consequently, in approaching the question of what degree of connection with these crimes must be established in order to attribute guilt to a defendant, we must not become enmeshed in the intricacies of the American or English law of principals and accessories, or of conspiracy, or indeed in the refinements or peculiar prejudices of any single judicial system. International law, with respect to these questions, must be derived and applied from a variety of sources and legal systems, including both civil and common law. And the notion of conspiracy, if sensibly and fairly confined, is, we submit, a useful body of doctrine to draw upon.

So much by way of general background to the observations which I will now direct more precisely to the narrow question for decision today. We are confronted by a question of the proper construction of Control Council Law No. 10, and the central and critical question of construction has been sharply emphasized by defense counsel. Both in the London Charter and Law No. 10 the definition of crimes against peace expressly includes the clause "participation in a common plan or conspiracy for the accomplishment of crimes against peace". The parallel definitions of war crimes and crimes against humanity do not include this clause. Does it follow that a conspiracy to commit crimes against peace may be charged under Control Council Law No. 10, but that a conspiracy to commit war crimes and crimes against humanity may not? The prosecution respectfully submits that it does not follow and in support of this view we advert to the substantive content of the three types of crime in question.

Let us look first at the definitions of war crimes and crimes against humanity in the London Charter and in Law No. 10. They are all acts of violence or of plunder. They are all acts which contravene, in the language of the Hague Conventions, "the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." Most, if not all, of them are unlawful under the internal penal laws of all civilized states. Indeed, the law of war crimes is, fundamentally, an attempt to define the circumstances under which a state of belligerent hostilities makes lawful acts which would otherwise be clearly unlawful. If, under the laws and customs of war, the protective cover of belligerency does not apply to these acts, they become murders or robberies or mayhems or other familiar crimes, commonly regarded as such under the laws of all nations. Crimes against humanity are also acts of this type, often committed under the color of so-called "law" or with executive or administrative tolerance of or encouragement by a dictatorial or oppressive government. Both in the case of war crimes and crimes against humanity, the acts themselves are murder, torture, enslavement, rape, plunder, destruction, devastation, etc.

Under both definitions, therefore, the acts with which we are dealing are well-recognized crimes which acquire an international aspect because of the circumstances under which they are committed. It is well-settled, and we think this is an important point, that a conspiracy to commit felonies of these types is an indictable offense at common law, and regardless of whether any statute expressly so provides. This has been settled in a multitude of English and American decisions over a number of years. It was, undoubtedly, for this reason that the draftsmen of the London Charter and Control Council Law No. 10 saw no need to include an express reference to conspiracy in the definition of war crimes and crimes against humanity, any more than they felt it necessary to make express reference to the liability of accessories and accomplices or to the law of attempts. All these things adhere to such crimes auto-

matically.

Why then did the draftsmen of the London Charter make specific reference to "common plan or conspiracy" in the definition of crimes against peace? Clearly, we submit, this was done out of abundance of caution because of certain differences between the nature of crimes against peace on the one hand and war crimes and crimes against humanity on the other hand. To be sure, as the London Charter and Law No. 10 both recognize and as the International Military Tribunal has held, the acts of planning and waging aggressive wars had come to be regarded as criminal under international law some years prior to the outbreak of the second World War. But the crime of planning and waging an aggressive war is, in many respects, peculiarly an international law crime, and particularly subject to international jurisdiction. The acts condemned as criminal in the definition of crimes against peace are not acts which are declared to be criminal under the internal national law of most states. Furthermore, while war crimes and crimes against humanity can certainly be committed by a single individual, it is hard to think of any one man as committing the crime of waging an aggressive war as a solo venture. It is peculiarly a crime brought about by the confederation or conspiracy of a number of men acting pursuant to well-laid plans. It matures over a long period of time, and many steps are involved in its consummation. The inter-relationships between the confederates or conspirators are likely to be extremely complicated and far-flung. For all these reasons, and particularly because planning an aggressive war is not, like murder, a standard felony to which the orthodox paraphernalia of doctrine as to the liability of accomplices automatically applies, the draftsmen of the London Charter and Law No. 10 included an express reference to conspiracy in the definition of crimes against peace.

I think it is quite clear that it never occurred to the framers of the London Charter that, by including a reference to conspiracy with respect to crimes against peace, they would thereby raise the implication that conspiracy was excluded in the field of war crimes and crimes against

humanity. If any such doubts do arise, undoubtedly they were set at rest by the paragraph which immediately follows these definitions in the London Charter and which states that:

"Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in the execution of such plan."

Certainly, too, it never occurred to those who drafted the indictment before the International Military Tribunal that the London Charter

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did not comprehend a conspiracy to commit war crimes and crimes against humanity. Indeed, the whole structure of the indictment in the international trial makes it clear that the chief prosecutors of the four nations laid great stress upon the concept of conspiracy as reaching out to include all the crimes charged in the indictment. The first paragraph under Count one of the indictment before the International Military Tribunal makes this abundantly clear, and the same appears in many other places throughout. Mr. Justice Jackson, who was the signatory on behalf of the United States to both the London Charter and the indictment, stated in opening the case before the International Military Tribunal.

"It is my purpose to open the case, particularly under Count One of the Indictment, to deal with the common plan or conspiracy to achieve ends possible only by resort to crimes against peace, war crimes, and crimes against humanity."

Furthermore, I am sure that it never occurred to the Allied Control Council when it adopted Law No. 10 in December 1945, during the proceedings before the International Military Tribunal, that by following the language of the London Charter they had excluded from the scope of Law No. 10 conspiracies to commit war crimes and crimes against humanity. And finally, so far as I am aware, such an idea never occurred to any of the defense counsel during the entire course of the international trial. No such contention was ever made on behalf of any of the defendants and, as a result, there was never any argument upon, or thought given, to such a question during the international trial.

The International Military Tribunal, however, came to a different conclusion, and held that the London Charter "does not define as a separate crime any conspiracy except the one to commit acts of aggressive war." As to this, the prosecution has two comments to make.

Firstly, why did the International Military Tribunal reach this conclusion? I think the reason was an underlying hostility, particularly on the part of the continental members of the court, to the concept of cons-

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piracy as such. Since the conclusion of the international trial, the distinguished French member of the Tribunal, Professeur Domedieu de Vabres has set forth in a lecture certain of his views about the Judgment of the International Military Tribunal, in the course of which he made certain significant comments upon the doctrine of conspiracy some of which are quoted by Dr. Haensel and some of which is repeated here now. Dr. Haensel stated:

"The general notion of conspiracy is peculiar to British law. The indictment includes in this term the entire Hitlerian enterprise leading to the seizure of power and to aggressive war....."

"The danger of such incriminations is to open the door to despotism. The charge of conspiracy is the favorite weapon of tyranny. When Hitler wanted to put down his political adversaries, he accused them of having plotted against him."

I hardly think that any statement could illustrate better that distrust of the concept of conspiracy which I mentioned earlier. As I tried to explain at that point, this distrust has arisen chiefly out of efforts to stretch the law of conspiracy to cover acts, otherwise legal, which are said to become illegal by virtue of the mere fact of confederation. And, as I also pointed out, no such efforts to extend the doctrine of conspiracy are involved in the London Charter or Law No. 10 or the cases before these Tribunals. A diametrically opposite comment on the judgment of the International Military Tribunal has recently been made by the distinguished American statesman and jurist Mr. Henry L. Stimson, who has said, in a recent article on foreign affairs:

"If there is a weakness in the Tribunal's findings, I believe it lies in its very limited construction of the legal concept of conspiracy. That only eight of the 22 defendants should have been found guilty on the count of conspiracy to commit the various crimes involved in the indictment seems

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to be surprising. I believe that the Tribunal would have been justified in a broader construction of the law of conspiracy....."

In short, we submit that the International Military Tribunal excluded conspiracies to commit war crimes and crimes against humanity from the scope of the Charter because of a mistaken and misapplied suspicion of the whole concept of conspiracy on the part of some members of the International Military Tribunal, which led the Tribunal to dispose of a contentious point of no great importance to the outcome of the proceedings, by taking the easy way out.

Secondly, the prosecution respectfully submits that the decision of the International Military Tribunal was clearly wrong, and overlooked the express language of the Charter. The Tribunal did, indeed, quote the final paragraph of Article 6 of the Charter, which states that:

"Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."

But with reference to this paragraph, the IMT stated that:

"In the opinion of the Tribunal, these words do not add a new and separate crime to those already listed. The words are designed to establish the responsibility of persons participating in a common plan. The Tribunal will therefore disregard the charges in Count One.....and will consider only the common plan to prepare, initiate, and wage aggressive war."

This conclusion, we submit, is an entirely unwarranted interpretation of this paragraph of the Charter. True it is, that this language of the Charter is designed "to establish the responsibility of persons parti-

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operating in a common plan." But a common plan to do what? In the exact language of the Charter, a common plan "to commit any of the foregoing crimes." We doubt that anything could be very much clearer. And while, to be sure, the decisions of the International Military Tribunals on points of law are entitled to the utmost consideration and deference, Ordinance No. 7, under which these Tribunals are constituted, does not make the decisions of the International Military Tribunal on points of law binding.

We submit, therefore, that the decision of the International Military Tribunal in this respect is wrong, and that these Tribunals should reach a contrary result under Control Council Law No. 10. To be sure, the paragraph which follows the definition of crimes in Law No. 10 is different from the paragraph which follows the definitions of crimes in the London Agreement. Paragraph 2 of Law No. 10, immediately following the definitions, reads as follows:

"Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime or ---"

(f) is a clause which I shall not read because it relates to crimes against peace. This paragraph does not employ the word "conspiracy" or the phrase "common plan." But its purpose is fundamentally the same as that of the paragraph similarly placed in the London Agreement, and is spelled out in much greater detail in Law No. 10. That purpose, abundantly reflected in all modern systems of criminal law, is to recognize the criminal liability of those who are substantially connected with

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the commission of a crime, even though the final criminal act is performed by someone else. As Mr. Justice Jackson stated in his opening address before the International Military Tribunal:

"Every day in the courts of countries associated in this prosecution, men are convicted for acts which they did not personally commit but for which they are held responsible because of membership in illegal combinations or plans or conspiracies."

Indeed, the scope of paragraph 2 of Article II of Control Council Law No. 10 which I have just quoted, is, we believe, broader than that of the doctrine of conspiracy, and in this connection, I refer particularly to clauses (c) through (f) of the paragraph. This is not the proper occasion to undertake an exhaustive analysis of the scope of the paragraph in question, but I think it is quite clear that it is more than broad enough to comprehend the criminal liabilities which are held to attach to those who enter into a criminal conspiracy.

Furthermore, the prosecution submits that the Charter and Law No. 10 both should be construed as comprehending conspiracies to commit war crimes and crimes against humanity, even if these paragraphs following the definitions of crimes, which we have been discussing, had been omitted from the Charter and Law No. 10. Surely it is not, and never has been, the law that the penal consequences deriving from the commission of international law crimes can be visited only upon the single individual who pulls the trigger or turns on the gas. I am sure that even counsel for the defense would not suggest such a preposterous conclusion, which would rob international penal law of all its meaning and substance. In applying international penal law, just as in applying domestic penal law, we must determine the substantial degree, or quality of participation in crimes upon the basis of which a fair judgment of guilt must be rendered. And in making these determinations under in-

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ternational law, it is surely not only appropriate but wise to draw upon such well-established bodies of legal doctrine in highly developed legal systems as will assist us in arriving at a result which commends itself to our sense of justice. The International Military Tribunal did not find that any considerations of general jurisprudence stood in the way of applying the doctrine of conspiracy in the case of crimes against peace, although indeed, it applied that doctrine so narrowly as to arouse criticism rather than approval from so distinguished and fair minded a jurist as Mr. Stimson; and I might point out that much of Dr. Haensel's argument has been directed against the concept of conspiracy in general and would apply equally to a conspiracy to commit crimes against peace.

As earlier precedents, earlier than that of the IMT, applied in the case of war crimes, the prosecution might mention the opinion of the reviewing authority rendered in March 1946 in United States v. Weiss and others, who were tried and convicted for atrocities at the Dachau concentration camp. This opinion contains a rather lengthy discussion of the application of the doctrine of conspiracy to - I quote - "war crimes committed by the concert, conspiracy, or common design of one or more individuals." - End of quotation - The Dachau opinion quotes from the opinion of the British reviewing authorities in the earlier Belsen concentration camp case, in which the 45 accused were charged with being "together condemned as parties to the ill treatment of....Allied nationals", and in which the British authorities reviewing the conviction stated:

"The accused were not charged with individual murders, though any such were proved. On the charges as framed, the case for the prosecution against an individual accused was established once the court was satisfied that he or she was a member of the staff of the camp, and that his or her acts were proved to be such as identified him or

JOINT SESSION

or per with the system of ill treatment, assuming that the system was established, of which there was indeed no question."

In summary, the prosecution emphasizes that it is misleading to consider this question in terms of whether conspiracy constitutes a "separate" or substantive crime at international law. Conspiracy, to achieve an unlawful objective or to use unlawful means to attain an objective is not, properly speaking, a separate subsequent crime at all, any more than being an accessory or an accomplice is a crime; it is an adjunct of the crime; and the question here is the test of the degree of connection with crime necessary to establish guilt. Only in those rare cases where English and American courts have attached criminal guilt to acts committed in confederation which would not have been illegal if committed singly can conspiracy be properly spoken of as a "separate" crime at all. And with such cases, the prosecution emphasizes, we are not here concerned in the slightest degree.

It is important, also, to bear in mind that neither the London Charter nor Law No. 10 purports to be a complete, or even a nearly complete codification of international penal law. Surely no one would have attempted to do this in so narrow a compass. The definition of war crimes, for example, remits us for a fuller exposition to "the laws or customs of war", and if we look for these in the Hague Conventions, we find that here too the contracting parties recognize the incompleteness of the Hague Conventions as a codification of the laws of war, and in turn remit us to "the principles of the law of nations." Particularly in respect to the necessary degree of connection with a crime, the provisions of the London Charter and Law No. 10 are illustrative rather than exhaustive attempts at statutory definition. Neither of them, for example, makes mention of attempts, yet it surely was not the intention in either case to eliminate attempts from international penal law. Let us suppose, for example, that an American or British or other Allied Jewish soldier is taken by the Germans as a prisoner of war, and that after his capture, when the fact that he is Jewish is discovered, a German soldier determines for this reason to shoot him, and loads his gun and makes ready for the execution, at which moment he is in turn captured by the advancing Allies and the execution is forestalled, the German soldier being caught in the act. Can one imagine that the German would not be court-martialed immediately, and rightly, for the attempted murder of an unarmed prisoner-of-war? Such examples could readily be multiplied and serve to emphasize that we do not find international penal law completely codified and ready to hand, as in State criminal code.

Consequently, if Law No. 10 does not make express reference to conspiracy as an aid to determining guilt for war crimes that in itself is hardly governing. As we have pointed out the language of paragraph 2 of Article II of Law No. 10 is broader than the doctrine of conspiracy. Furthermore, if the doctrine of conspiracy should, as we contend, normally be drawn upon in determining guilt for crimes

at international law, Law No. 10 in, see no barrier to such use. Paragraph 2 of Article III of Control Council Law No. 10 expressly states that:

"Nothing herein is intended to, or shall, impair or limit the jurisdiction or power of any court or tribunal now or hereafter established in any Zone by the Commander thereof, or of the International Military Tribunal established by the London Agreement of 8 August, 1945."

Ordinance No. 7, which of course cannot and does not purport to create or define crimes, but which does prescribe the organization and powers of these Tribunals for the trial and punishment of offenses recognized as crimes in Law No. 10, expressly provides that the guilt for the commission of any such crime attaches to conspirators.

In conclusion, the prosecution respectfully suggests that it would be useless, anomalous, and harmful if the doctrine of conspiracy is held to be applicable in the cases of crimes against peace but not in the case of war crimes and crimes against humanity. We are unable to find any sensible basis for such a distinction, and we believe that such a conclusion will tend to warp the logical and reasonable application of international penal law.

Before sitting down, I want to comment very briefly on the results which defense counsel seem to think would flow from a decision in their favor on the question being argued this morning. I suppose that the question this morning is being argued in general and without special reference to the disposition of the three cases in which the prosecution has charged a conspiracy in the first counts of the indictments therein. Presumably, should the Tribunal en banc decide in accordance with the position taken by the defense counsel, Tribunals I, II, and III will thereafter determine individually what disposition should, in consequence, be made of Counts 1 in each of these three indictments. However, the prosecution thinks it appropriate to point out at this time that each of these counts, in addition to charging that the defendants were connected with the alleged crimes as conspirators,

also contains charges in the exact language of paragraph 2 of Article II of Control Council Law No. 10. Therefore, we suggest, these courts would not become defective, even though the Tribunals en banc should determine that these charges cannot be made in the language of conspiracy. Nor do we think that any significant shortening of the proceedings in these cases is likely to result whichever way the Tribunals en banc decide the question being argued this morning because, as we have pointed out, the language of paragraph 2 of Article II of Control Law No. 10 is broader than the concept of conspiracy, and it will remain open to the prosecution to establish the connection of the defendants with the alleged crimes under that broader language of Control Council Law No. 10.

I venture to make only one other observation of general interest, but which may particularly concern counsel for the defense. I have noticed in several of their arguments, addressed to today's question, before Tribunals II and III and in Dr. Haenschel's learned presentation today, that the suggestion is repeatedly made that any application in these trials of doctrine unfamiliar to German law will work grave injustice and will violate a number of learned Latin legal maxims such as nulla poena sine lege. I entirely agree as pro without saying, that a man must not be punished for acts not unlawful at the time of their commission. But I have tried today to illuminate the proposition that, in the field of international penal law, many auxiliary principles and doctrines must be drawn from a variety of legal systems. These and other internationally constituted Tribunals cannot work exclusively in the medium of German law, or American law, or even a combination of the two. That is not the genius of international law.

And may I be permitted to remark also that if the objections of defense counsel to an infusion of legal principles from non-German legal systems were to be taken at face value, certain consequences would flow therefrom which, I am sure, they would find most unwelcome. I will

confine myself to two illustrations. Under German law, a defendant cannot testify under oath in his own behalf. It is because of an infusion of non-German legal principles that the defendants in these proceedings are entitled to take an oath and enter that box. Under German law, there is no requirement that the guilt of an accused be proved "beyond a reasonable doubt" in order to support a judgment of guilt. Hjalmer Schacht was acquitted by the International Military Tribunal because his knowledge of Hitler's plans for aggressive warfare was "not established beyond a reasonable doubt". Erhard Milch was acquitted under Count 2 of the indictment filed against him because Military Tribunal II believed that his guilt had not been established "beyond a reasonable doubt", and Tribunal II stated in its judgment acquitting Milch:

"Unless the court which hears the proof is convinced of guilt to the point of moral certainty, the presumption of innocence must continue to protect the accused. If the facts as drawn from the evidence are equally consistent with guilt and innocence, they must be resolved on the side of innocence. Under American law, neither life nor liberty is to be lightly taken away, and, unless at the conclusion of the proof there is an abiding conviction of guilt in the mind of the court which sits in judgment, the accused may not be condemned."

Paying reverent attention to these sacred principles, it is the judgment of the Tribunal that the defendant is not guilty of the charges embraced in Count Two of the Indictment."

The two principles which I have used for illustration are not known to the German law. They are being applied in these proceedings because, in the view of the four powers who drew up the London Charter and Control Council Law No. 10, they are principles conducive the fairness and justice in the administration of international penal law. They both derive from the Anglo-Saxon common law. I do not believe that we will hear any defense counsel argue that their application in these proceedings works injustice because of their alien origin.

THE PRESIDENT: Counsel for the defense has ten minutes remaining of his time.

MR. HANSEL: We, on many point agree with the Prosecution.

However, first of all, let me say that the Prosecution, too, based themselves on the assumption that international penal law is applicable and that we are not bound to any internal laws of any particular state. Consequently, in this practical case, the question is whether the conspiracy to conduct war, and again, crimes against humanity, is part of this international law. I believe that of all the arguments stated by General Taylor, the one that is the most important, and the one which I will concern myself with now, is the question as to whether that conspiracy is necessary for the achievement of a just judgment. In other words, do we need the conspiracy in order to mete out punishment which otherwise would not be meted out for certain crimes?

I will admit that we, the continental jurists, have many differences and are much in the dark regarding the interpretation of that law, of conspiracy, and we still remain in the dark to some extent. However, I must say that General Taylor is probably not altogether clear about continental law because it is a matter of course that we too know responsibility for perpetrations committed by others. We do not only punish those who shoot, but also those who instigate the shooting, even if they are not physically involved at first sight. Participation, instigation, all such matters are, as a matter of course, punishable under continental law too; and, of course, no international penal law can be imagined without punishing those who in reality desired the perpetration and carried it into effect in some way.

The great difference, however, between that and conspiracy, as we see it, is that many may be caught in the conspiracy charge who did not themselves desire such a deed but who got involved not through their own volition and then are brought into the conspiracy.

The other objection against conspiracy is that the basic idea held by the authors, Bishop and Sers, is the fundamental thought that something might not be punishable which is committed by an individual but might become punishable if it is brought about by collaboration

between several. Let me give you an example: If a grown-up man seduces a grown-up woman, then that is not a punishable offense, although it is indecent. If several men do it, having agreed previously to do it then it is conspiracy. That is where the trouble begins. I do admit that there is a correct principle attached to it, but it is a thought which is strange to us, which makes us feel anxious, and we are likely to do it out of our own fear that justice may not be served through this because the problem becomes too extensive. That is the reason why we hold against conspiracy.

I therefore say it is not necessarily germane for a just finding or judgment as far as the question is concerned as to whether something can be considered right under international law, which is as hotly fought about as the conspiracy, I would like to say, just as Donnedieu de Vabre and General Taylor have said. That is the very argument against conspiracy. It seems to emphasize that conspiracy was not to be included in Law No. 10, because Law No. 10 was not published until the I.T. was in session. Contradictions which affected the I.T., said Donnedieu de Vabre, were apparently deliberately excluded, and presumably the final judgment of the I.T. shows that the final decision was that a punishable conspiracy was in existence due to special laws dealing with crimes against peace, but not against humanity.

9 July--24-9-1-Feldt-(Frank-)

Joint session.

This becomes abundantly clear if you examine the initials history which Gen. Taylor dealt with. It shows with abundant clarity the question brought up by American jurists, too, namely that this was not to become part of international law.

Once when I was young student I went to Laten in England and I was taken to a hall, one wall of which had toppled over. This wall had a door which was made in the 13th century and had been made so low that every one going through that door had to bend down. Now, this wall had fallen down and the possibility existed to put a beautiful new door into the wall, but what did the English do? They put the same old door in once again and everybody had to bend, evern afterwards. That is tradition as a pleasure.

If I trace conspiracy, if I look at something made in the 13th century, it is an historical door, but I can't imagine that anything that was right in the 13th century is right today. Perhaps it would be right to assume that something more timely, more modern, would be more applicable. And I also feel that the principle which we are now arguing about the principle of guilt which TRAINING preaches and which is included in the LT judgment is not properly dealt with by the conspiracy charge. That is our main objection. That is we wanted to find expression for. Not by any means that any crimes should be unpunished. They should be punished, yes, but let us punish them concretely. Let us punish them with greater safety, without that we have this uncertain spirit. This "wavering of the spirit" as our great thinker KANT called it, but we have concrete conceptions, and that is what we are fighting for.

What the formal decision is concerned, I feel that we must consider that a way out would be this: application is Tribunal 3 which only Tribunal 3 is entitled to decide upon. If a plenary meeting were to deal with it, then it wouldn't make a decision applicable to Case 3 but would make a general decision so that the judges of Tribunal 3 know how the other judges feel when they in their turn decide about Case 3.

9 July--GJ-9-2-Feldt-(Frank)-

Joint session.

I feel that every individual court ought to decide its own cases, individually, even if a general agreement has here been reached. I believe that the arguments brought forward about the interpretation of Law No. 10 are actually supporting my thesis. Gen. Taylor pointed out that there was, in fact, a considerable difference between crimes against peace and crimes against peace and humanity, as far as the conspiracy charge is concerned. The crime against peace is impossible without joint collaborative action, then consequently it had to be included, but the crime against the Hague Convention and humanity might be committed by one and it might be committed by thousands. Then let us punish who were the perpetrators, but not an uncertain body of people who were never demonstrated the "ANIMUS AUCTORIS" and never incurred guilt themselves.

THE PRESIDENT: The arguments of the Prosecution and the defense having been concluded, this en banc session of the judges of the different Tribunals, the purpose of which was announced at the opening of the session, is now adjourned.

(The Tribunal adjourned at 11:35 hours.)

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NATIONAL ARCHIVES MICROFILM PUBLICATIONS

OFFICIAL RECORD

UNITED STATES MILITARY TRIBUNALS NURNBERG

**CASE No. 1 TRIBUNAL I
U.S. vs KARL BRANDT et al
VOLUME 29**

**TRANSCRIPTS
(English)**

14-17 July 1947 pp. 10717-11198

Official Transcript of the American Military Tribunal in the matter of the United States of America against Karl Brandt, et al, defendants, sitting at Nuernberg, Germany, on 14 July 1947, 0930, Justice Beals presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

The Honorable, the Judges of Military Tribunal I. Military Tribunal I is now in session. God save the United States of America and this honorable Tribunal. There will be order in the court.

THE PRESIDENT: Mr. Marshal, have you ascertained if the defendants are all present in court?

THE MARSHAL: May it please Your Honor, all the defendants are present in the court.

THE PRESIDENT: The Secretary General will note for the record the presence of all the defendants in court.

The Tribunal will now announce its ruling on the motion of certain defendants against Count I in the indictment concerning the charge of conspiracy.

MILITARY TRIBUNAL I

Count I of the indictment in this case charges that the defendants, acting pursuant to a common design, unlawfully, willfully and knowingly did conspire and agree together to commit war crimes and crimes against humanity as defined in Control Council Law No. 10, Article 2. It is charged that the alleged crime was committed between September 1939 and April 1945.

It is the ruling of this Tribunal that neither the Charter of the International Military Tribunal nor Control Council Law No. 10 has defined conspiracy to commit a war crime or crime against humanity as a separate substantive crime; therefore, this Tribunal has no jurisdiction to try any defendant upon a charge of conspiracy considered as a separate substantive offense.

Count I of the indictment, in addition to the separate charge of conspiracy, also alleges unlawful participation in the formulation and execution of plans to commit war crimes and crimes against humanity

which actually involved the commission of such crimes. We, therefore, cannot properly strike the whole of Count I from the indictment, but, insofar as Count I charges the commission of the alleged crime of conspiracy as a separate substantive offense, distinct from any war crime or crime against humanity, the Tribunal will disregard that charge.

This ruling must not be construed as limiting the force or effect of Article 2, paragraph 2 of Control Council Law No. 10, or as denying to either prosecution or defense the right to offer in evidence any facts or circumstances occurring either before or after September 1939, if such facts or circumstances tend to prove or to disprove the commission by any defendant of war crimes or crimes against humanity as defined in Control Council Law No. 10.

The Tribunal has convened this morning to hear arguments of the prosecution and counsel for defense in the case which has been pending before this Tribunal. Counsel for the prosecution may now proceed with its argument.

MR. MC RANEY: May it please the Tribunal:

INTRODUCTION

Today marks the closing week of this trial, which began on December 9, 1946. Today we have behind us 133 trial days, approximately 33 of which were consumed by the prosecution in presenting the case-in-chief and rebuttal evidence. Thirty-two witnesses gave evidence orally for the prosecution and thirty witnesses, in addition to the twenty-three defendants, gave evidence for the defense. The prosecution submitted in evidence 570 exhibits, most of which were German documents captured by the Allied armies. Defense exhibits totalled 856, consisting primarily of affidavits. By the time the judgment has been read, the record will exceed 12,000 pages.

It is appropriate, in looking back over the history of this proceeding, to note the fairness with which the trial has been conducted. Whatever the defendants could say in their behalf, they were allowed to

say. The Tribunal has been unstinting in its efforts to procure such witnesses, documents, and facilities as the defense has requested. As Justice Jackson has stated, "They have been given the kind of a trial which they, in the days of their pomp and glory, never gave to any man."¹ Several of these defendants are peculiarly able to appreciate that fact to the fullest. The defendant Karl Brandt, for example, is no stranger to Nazi justice. In April 1945, as a result of difficulties with Hitler and Bormann, he was afforded a trial of a few hours on a charge of treason. Tried by an SS Obergruppenfuehrer, he was sentenced to death. Only the confusion of the dying days of the war saved him for this reunion. Brandt admitted to this Tribunal that there was some fault to be found with that trial because, as he put it, "the sentence had been established beforehand."²

The responsibility of a fair trial to the defendants has been discharged. So also for the prosecution has that obligation to the peoples and races on whom the scourge of these crimes was laid. The crimes which these defendants perpetrated in the name of medical science have been established by clear and overwhelming proof which is indelibly written in the record of this proceeding. No one can doubt that these incredible events were fact and not fable. The time for suspended judgment is now passed. The time for decision has been reached.

Before proceeding to outline the prosecution's case, it may perhaps be desirable to anticipate several legal questions which will undoubtedly be raised with respect to war crimes and crimes against humanity, as defined in Article II of Control Council Law No. 10. Law No. 10 is, of course, the law of this case and its terms are conclusive upon every party to this proceeding. This Tribunal is, we respectfully submit, bound by the definitions in Law No. 10, just as the International Military Tribunal was bound by the definitions in the London Charter. It

1. I.M.T. transcript, p. 14333
2. Transcript, p. 2622

was stated in the I.M.T. judgment that:

"The jurisdiction of the Tribunal is defined in the Agreement and Charter, and the crimes coming within the jurisdiction of the Tribunal, for which there shall be individual responsibility, are set out in Article 6. The law of the Charter is decisive, and binding upon the Tribunal...

* * * * *

"The Tribunal is, of course, bound by the Charter, in the definition which it gives both of war crimes and crimes against humanity." 1

In outlining briefly the prosecution's conception of some of the legal principles underlying war crimes and crimes against humanity, I shall, with the Tribunal's permission, adopt some of the language from the opening statement of the prosecution in the case against Friedrich Flick, et al., now pending before Tribunal No. IV. General Taylor there said:

"The definitions of crimes in Law No. 10, and the comparable definitions in the London Agreement and Charter of 8 August 1945, are statements and declarations of what the law of nations was at that time and before that time. They do not create 'new' crimes; Article II of Law No. 10 states that certain acts are 'recognized' as crimes. International law does not spring from legislation; it is a 'customary' or 'common' law which develops from the 'usages established among civilized peoples' and the 'dictates of the public conscience.' (2) As they develop, these usages and customs become the basis and reason for acts and conduct, and from time to time they are recognized in treaties, agreements, declarations, and learned texts. The London Charter and Law No. 10 are important items in this stream of acts and declarations through which international law grows; they are way stations from which the outlook is both prospective and retrospective, but they are not retroactive. Mr. Henry L. Stimson has recently expressed these principles with admirable clarity: (3)

'International law is not a body of authoritative codes or statutes; it is the gradual expression, case by case, of the moral judgments of the civilized world. As such, it corresponds precisely to the common law of Anglo-American tradition. We can understand the law of Nuremberg only if we see it for what it is - a great new case in

1. Trial of the Major War Criminals, Vol. 1, pp. 218, 253.
2. Hague Convention No. IV of 18 October 1907.
3. "The Nuremberg Trial: Landmark in Law", Henry L. Stimson, published in "Foreign Affairs", January 1947.

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the book of international law, and not a formal
enforcement of codified statutes.'

"Law No. 10 is all this and something more besides. It is a legislative enactment by the Control Council, and is therefore part of the law of and within Germany. One of the infirmities of dictatorship is that, when it suffers irretrievable and final military disaster, it usually crumbles into nothing and leaves the victims of its tyranny leaderless amidst political chaos. The Third Reich had ruthlessly hunted down every man and woman in Germany who sought to express political ideas or develop political leadership outside of the bestial ideology of Nazism. When the Third Reich collapsed, Germany tumbled into a political vacuum. The Declaration by the Allied Powers of 5 June, 1945, announced the 'assumption of supreme authority' in Germany 'for the maintenance of order' and 'for the administration of the country', and recited that:

'There is no central government or authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country, and compliance with the requirements of the victorious powers.'

Following this declaration, the Control Council was constituted as the repository of centralized authority in Germany. Law No. 10 is an enactment of that body, and is the law of Germany, although its substantive provisions derive from and embody the law of nations. The Nurnberg Military Tribunals are established under the authority of Law No. 10,¹ and they render judgment not only under international law as declared in Law No. 10, but under the law of Germany as enacted in Law No. 10. The Tribunals, in short, enforce both international law and German law, and in interpreting and applying Law No. 10, they must view Law No. 10 not only as a declaration of international law, but as an enactment of the occupying powers for the governance of and administration of justice in Germany. The enactment of Law No. 10 was an exercise of legislative power by the four countries to which the Third Reich surrendered, and, as was held by the International Military Tribunal:²

'.....the undoubted right of these countries to legislate for the occupied territories has been recognized by the civilized world.'³

MR. McHANEY: That's the end of the quotation from General Taylor's statement. War Crimes are defined in Law No. 10 as atrocities or offenses in violation of the laws or customs of war. This definition is based primarily upon the Hague Conventions of 1907 and the Geneva Con-

1. Control Council Law No. 10, Article III, para 1 (d) and 2; Military Government Ordinance No. 7, Article II.
2. Judgment of the International Military Tribunal, Vol. I, Trial of the Major War Criminals, p. 218.

vention of 1929, which declare the law of nations at those times with respect to land warfare, the treatment of prisoners of war, the rights and duties of a belligerent power when occupying territory of a hostile state, and other matters. The laws and customs of war apply between belligerents, but not domestically or among allies. Crimes by German nationals against other German nationals are not War Crimes, nor are acts by German nationals against Hungarians or Roumanians. The War Crimes charged in this Indictment all occurred after 1 September 1939, and it is therefore unnecessary to consider the somewhat narrow limitation of the scope of War Crimes by the International Military Tribunal to acts committed after the outbreak of the war. One might argue that the occupations of Austria and the Sudetenland in 1938 and of Bohemia and Moravia in March 1939 were sufficiently similar to a state of belligerency to bring the laws of war into effect but such questions are academic for purposes of this case.

However, in the case of some of the defendants, and this is especially true with respect to Gebhardt, Fischer, and Oberhauser in connection with the sulfanilamide experiments, it is to be expected that the argument will be made that crimes against Polish, and perhaps also Czech, nationals do not constitute War Crimes within the meaning of Control Council Law No. 10. This argument is based upon the proposition that Germany was no longer bound by the rules of land warfare in many of the territories occupied during the war because Germany had completely subjugated those countries and incorporated them into the Third Reich, and therefore Germany had the authority to deal with the occupied countries as though they were part of Germany. Thus, the defenses placed in evidence the Russo-German Boundary and Friendship Treaty of 30 December 1939 as well as certain German decrees concerning the administration of occupied Poland.¹ Without stopping to argue the point that that part of Poland administered by the so-called Governor General from which came the Polish subjects for the sulfanilamide experiments, was never incorporated into the Reich, it will be sufficient to point out that this

1. Gebhardt Exhibits 13, 14 and 15.

argument was disposed of by the International Military Tribunal. In its Judgment, the following was said:

"In the view of the Tribunal, it is unnecessary in this case to decide whether this doctrine of subjugation, dependent as it is upon military conquest, has any application where the subjugation is the result of the crime of aggressive war. The doctrine was never considered to be applicable so long as there was any army in the field attempting to restore the occupied countries to their true owners, and in this case, therefore, the doctrine could not apply to any territories occupied after 1 September, 1939."¹

The argument also has no validity with respect to Czech nationals. The International Military Tribunal said that:

"As to War Crimes committed in Bohemia and Moravia, it is a sufficient answer that these territories were never added to the Reich, but a mere protectorate was established over them."¹

In connection with the charge of Crimes against Humanity, it is also anticipated that an argument will be made by the defense to the effect that crimes committed by German nationals against other German nationals cannot constitute Crimes against Humanity as defined by Article II of Control Council Law No. 10 and hence are not within the jurisdiction of this Tribunal. The evidence of the Prosecution has proved that in substantially all of the experiments prisoners of war or civilians from German occupied territories were used as subjects. This proof stands uncontradicted save by general statements of the defendants that they were told by Hitler or some unidentified person that the experimental subjects were all German criminals or that they spoke fluent German. Thus, for the most part, the acts here in issue constitute War Crimes and hence, at the same time, Crimes against Humanity. Certainly there has been no proof whatever that an order was ever issued restricting the experimental subjects to German criminals as distinguished from non-German nationals. If, in this or that minor instance, the proof has not disclosed the precise nationality of the unfortunate victims or

1. Trial of the Major War Criminals, Vol. 1, p. 254

has been shown them to be Germans, we may rest assured that it was merely a chance occurrence.

Be that as it may, the Prosecution does not wish to ignore a challenge to the jurisdiction of the Tribunal even though it is of minor importance to this case. One thing should be made clear at the outset; we are not here concerned with any question as to jurisdiction over crimes committed before September 1, 1939, whether against German nationals or otherwise. That subject has been mooted and is in issue in another case now on trial, but the crimes in this case all occurred after the war began.

Moreover, we are not concerned with the question whether crimes against humanity must have been committed "in execution of or in connection with any crime within the jurisdiction of the Tribunal". The International Military Tribunal construed its Charter as requiring that Crimes against Humanity be committed in execution of, or in connection with, the crime of aggressive war. Whatever the merit of that holding, the language of the Charter of the International Military Tribunal which led to it is not included in the definition of Crimes against Humanity in Control Council Law No. 10. There can be no doubt that Crimes against Humanity as defined in Law No. 10 stand on an independent footing and constitute crimes per se. In any event, the crimes with which this case is concerned were in fact all "committed in execution of, or in connection with, the aggressive war". This is true not only of the medical experiments, but also of the euthanasia program, pursuant to which a large number of non-German nationals were killed. The Judgment of the International Military Tribunal expressly so holds.¹

Thus, it is clear that the only issue which is raised in this case as to Crimes against Humanity is whether the Tribunal has jurisdiction over crimes committed by Germans against Germans. Does the definition of Crimes against Humanity in Control Council Law No. 10 comprehend crimes by Germans against Germans of the type with which this case is concerned. The provisions of Law No. 10 are binding upon the Tribunal

1. Trial of the Major War Criminals, pp. 231, 247, 252, 254, 301.

as the law to be applied to the case.¹ The provisions of Section 1(c) of Article II are clear and unambiguous. Crimes against Humanity are there defined as:

"Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated."

The words "any civilian population" cannot possibly be construed to exclude German civilians. If Germans are deemed to be excluded, there is little or nothing left to give purpose to the concept of Crimes against Humanity. War Crimes include all acts listed in the definition of Crimes against Humanity when committed against prisoners of war and the civilian population of occupied territory. The only remaining significant groups are Germans and nationals of the satellite countries, such as Hungary or Roumania. It is one of the very purposes of the concept of Crimes against Humanity, not only as set forth in Law No. 10 but also as long recognized by international law, to reach the systematic commission of atrocities and offenses by a State against its own people. The concluding phrase of the definition of Crimes against Humanity, which is in the alternative, makes it quite clear that crimes by Germans against Germans are within the jurisdiction of this Tribunal. It reads "or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated". This reference to "domestic laws" can only mean discriminatory and oppressive legislation directed against a State's own people, as for example the Nurnberg laws against German Jews.

The matter is put quite beyond doubt by Article III of Law No. 10, which authorizes each of the occupying powers to arrest persons suspected of having committed crimes defined in Law No. 10, and to bring them to trial "before an appropriate tribunal". Paragraph 1(d) of Article III further provides that:

"Such Tribunal may, in the case of crimes committed by

1. Trial of the Major War Criminals, pp. 174, 253.

persons of German citizenship or nationality against other persons of German citizenship or nationality, or stateless persons, be a German court, if authorized by the occupying authorities."

This constitutes an explicit recognition that acts committed by Germans against other Germans are punishable as crimes under Law No. 10 according to the definitions contained therein, in the discretion of the occupying power. This has particular reference to Crimes against Humanity, since the application of Crimes against Peace and War Crimes, while possible, is almost entirely theoretical. If the occupying power fails to authorize German courts to try crimes committed by Germans against other Germans (and in the American zone of occupation no such authorization has been given), then these cases are tried only before non-German tribunals, such as these Military Tribunals.

What would be the effect of a holding that crimes by Germans against Germans can under no circumstances be within the jurisdiction of the Tribunal? Is this Tribunal to ignore the proof that tens of thousands of Germans were exterminated pursuant to a secret decree, because a group of criminals in control of a police State thought them "useless eaters" and an unnecessary burden, or that German prisoners were murdered and mistreated by the thousands in concentration camps, in part by medical experimentation? Military Tribunal II in the Milch case held that crimes against nationals of Hungary and Roumania were Crimes against Humanity. There is certainly no reason in saying that there is jurisdiction over crimes by Germans against Hungarians but not against Germans.

The judgment of the International Military Tribunal shows a clear recognition of its jurisdiction over crimes by Germans against Germans. After reviewing a large number of inhumane acts in connection with War Crimes and Crimes against Humanity, the Tribunal concluded by saying that:

".....from the beginning of the war in 1939 War Crimes were committed on a vast scale, which were also Crimes against Humanity; and insofar as the inhumane acts charged in the Indictment, and committed after the beginning of the war, did not constitute War Crimes, they were

all committed in execution of, or in connection with,
the aggressive war, and therefore constituted Crimes
against Humanity." ¹

Since War Crimes are necessarily also Crimes against Humanity, the broader definition of the latter can only refer to crimes not covered by the former, namely, crimes against Germans and nationals of countries other than those occupied by Germany. Moreover, the Prosecution in that case maintained that the inhumane treatment of Jews and political opponents in Germany before the war constituted Crimes against Humanity. The Tribunal said in this connection:

"With regard to Crimes against Humanity there is no doubt whatever that political opponents were murdered in Germany before the war, and that many of them were kept in concentration camps in circumstances of great horror and cruelty. The policy of terror was certainly carried out on a vast scale, and in many cases was organized and systematic. The policy of persecution, repression, and murder of civilians in Germany before the war of 1939, who were likely to be hostile to the Government, was most ruthlessly carried out. The persecution of Jews during the same period is established beyond all doubt." ¹

The Tribunal was there speaking exclusively of crimes by Germans against Germans. It held that such acts were not Crimes against Humanity, as defined by the Charter, not because they were crimes against Germans, but because they were not committed in execution of, or in connection with, aggressive war. Indeed, the Tribunal went on to hold that the very same acts committed after the war began were Crimes against Humanity. No distinction was drawn between the murder of German Jews and Polish or Russian Jews. And, moreover, no distinction was drawn between criminal medical experimentation on German and non-German concentration camp inmates or the murder of German and non-German ci-
1 *ibid*, p. 254.

villains under the euthanasia program. The Tribunal held them all to be War Crimes and/or Crimes against Humanity.

What is charged in the Indictment against these defendants? What is the nature of the crimes for which they are on trial? In Count I of the Indictment all of the defendants are charged with having participated in a common plan or conspiracy to commit, and which involved the commission of, criminal medical experiments on involuntary human subjects, which resulted in murders, atrocities, and other inhumane acts. The Tribunal has already heard argument on the question of jurisdiction to entertain the charge of conspiracy, and accordingly I shall limit myself, at a later point, to a few remarks on the law of conspiracy as such, the forms of participation set forth in Section 2 of Article IV of Law No. 10, and the application of both to the facts of this case.

Under Counts II and III (War Crimes and Crimes against Humanity, respectively), certain of the defendants are charged with participation in the murder of persons pursuant to the euthanasia program, the murder and ill-treatment of tubercular Poles, and the murder of 112 Jews for a skeleton collection. Under Paragraphs 6 and 11 of the same counts, all of the defendants are charged with participation in criminal medical experimentation on human subjects without their consent, which resulted in murders, atrocities, and other inhumane acts. It should be emphasized, as the Prosecution has frequently pointed out during the trial, that the basic charge under Paragraphs 6 and 11 of the Indictment is participation in criminal experiments, whatever those experiments may have been. Particulars concerning certain experiments were set forth in the Indictment and certain of the defendants were listed as having been specially active in and responsible for them. This, however in no way limits the Prosecution in supporting the basic charge by whatever evidence is in the record. It is a completely erroneous conception of the Indictment to view it as charging this or that defendant

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with having participated in this or that experiment. This amounts to confusing the proof to sustain the charge with the charge itself.

Moreover, the proof with respect to a given defendant should not be viewed by dismembering it and examining its separate parts. The evidence must be viewed as a whole to reach a judgment as to the real guilt of the defendants. It is impossible to assess the cumulative effect of the proof if the documents are separately considered and weighed as so many pieces of lifeless paper. I venture to predict that in the closing statements of defense counsel there will be a tedious torturing of each document, each to be discarded before proceeding to the next, without ever meeting the case established by the full sweep of the proof. One is sometimes able to break individual sticks from a tree. But if those same sticks are bound together, the result is unbreakable. So it is with proof.

No more can the experiments be viewed as hermetically sealed containers. Various experiments must be considered together to appreciate the full guilt of a defendant even though a judgment of guilt may not be sought with respect to each such experiment. For example, all of the Luftwaffe defendants would have the Tribunal find that in the high altitude experiments the dead Rascher was somehow exclusively responsible for all fatalities, even though at the time he was on active duty with the Luftwaffe. When the defendants Ruff and Romberg allegedly first learned of his "extracurricular" murders by having one killed in front of Romberg, they only hung around Dachau working with Rascher for another 6 weeks or so, and after all, according to Romberg, he saw just two more men killed in that time. Now, if one were somehow to think for a moment that there is some faint mitigating circumstance in the exemplary conduct of these two knights of Luftwaffe medical virtue, let us test the truth of their alleged disassociation from Rascher by looking at the freezing experiments which began less than 30 days after Ruff, Romberg, and Rascher published their joint report on the high altitude "tea party". Did the Luftwaffe Medical Service have anything to do with

these experiments on inmates in Dachau after that blackguard Rascher had killed men in their decompression chamber? Yes, the experiments were ordered by the Luftwaffe and executed exclusively by Luftwaffe doctors. Did Rascher have anything to do with them? Yes, indeed. He assisted Holzlochner and Eicke in torturing to death many more concentration camp victims. Did Ruff and Rosenberg know anything about all this continued criminal activity? Yes, Rosenberg was awarded a medal on Rascher's recommendation in September and in October 1942 both Ruff and Rosenberg were here in Nurnberg listening to the very edifying reports on the freezing experiments by Holzlochner and Rascher. Thus, to appreciate the full guilt of the defendants Ruff and Rosenberg in connection with the high altitude experiments it is necessary to look to the freezing experiments to see that Rascher, far from being court martialed by the Luftwaffe, after obtaining full knowledge of exactly what had happened, retained his rank and continued his murderous work in cooperation with other Luftwaffe doctors.

It will be seen from this review of the Indictment and from the evidence submitted by the Prosecution that these defendants are, for the most part, on trial for the crime of murder. As in all criminal cases, two simple issues are presented: Were crimes committed and, if so, were these defendants connected with their commission in any of the ways specified by Law No. 10? It is only the fact that these crimes were committed in part as a result of medical experiments on human beings that makes this case somewhat unique. And while considerable evidence of a technical nature has been submitted, one should not lose sight of the true simplicity of this case. The defendant Rose, who was permitted to cross-examine the Prosecution's witness Dr. A.C. Ivy of the Medical School of the University of Illinois, became quite exasperated at his reiteration of the basic principle that human experimental subjects must be volunteers. That, of course, is the cornerstone of this case. There are, indeed, other prerequisites to a permissible medical

experiment on human beings. The experiment must be based on the results of animal experimentation and a knowledge of the natural history of the disease under study and designed in such a way that the anticipated results will justify the performance of the experiment. This is to say that the experiment must be such as to yield results for the good of society unobtainable by other methods of study and must not be random and unnecessary in nature. Moreover, the experiment must be conducted by scientifically qualified persons in such manner as to avoid all unnecessary physical and mental suffering and injury. If there is an a priori reason to believe that death or disabling injury

might occur, the experimenters must serve as subjects themselves along with the non-scientific personnel. These are all important principles and they were consistently violated by these defendants and their collaborators. For example, we have yet to find one defendant who subjected himself to the experiments which killed and tortured their victims in concentration camps. But important as these other considerations are, it is the most fundamental tenet of medical ethics and human decency that the subjects volunteer for the experiment after being informed of its nature and hazards. This is the clear dividing line between the criminal and what may be non-criminal. If the experimental subjects cannot be said to have volunteered, then the inquiry need proceed no further. Such is the simplicity of this case.

What then is a volunteer? If one has a fertile imagination, suppositious cases might be put which would require a somewhat refined judgment. No such problem faces this Tribunal. The proof is overwhelming that there was never the slightest pretext of using volunteers. It was for the very reason that volunteers could not be expected to undergo the murderous experiments which are the subject of this trial that these defendants turned to the inexhaustible pool of miserable and oppressed prisoners in the concentration camps. Can anyone seriously believe that Poles, Jews, and Russians or even Germans, voluntarily submitted themselves to the tortures of the decompression chamber and freezing basin in Dachau, the poison gas chamber in Natzweiler, or the sterilization X-ray machines of Auschwitz? Is it to be held that the Polish girls in Ravensbruck gave their unfettered consent to be mutilated and killed for the glory of the Third Reich? Was the miserable Gypsy who assaulted the defendant Beiglboeck in this very court room a voluntary participant in the sea water experiments? Did the hundreds of victims of the murderous typhus stations in Buchenwald and Natzweiler, by any stretch of the imagination, consent to those experiments? The preponderance of the proof leaves no doubt whatever as to the answer to these questions.

The testimony of experimental subjects, eye-witnesses, and the documents of the defendants own making establish beyond a shadow of a doubt, that these experimental subjects were non-volunteers in every sense of the word.

This fact is not seriously denied by the defendants. Most of them who performed the experiments themselves have admitted that they never so much as asked the subjects whether they were volunteering for the experiments. As to the legal and moral necessity for consent, the defendants pay theoretical lip service while at the same time leaving the back door ajar for a hasty retreat. Thus, it is said that the totalitarian "State" assumed the responsibility for the designation of the experimental subjects and under such circumstances the men who planned, ordered, performed, or otherwise participated in the experiment cannot be held criminally responsible even though non-volunteers were tortured and killed as a result. This was perhaps brought out most clearly as a result of questions put to the defendant Karl Brandt by the Tribunal. When asked his view of an experiment which was assumed to have been of highest military necessity, and of involuntary character with resultant deaths, Brandt replied:

"In this case I am of the opinion that, when considering the circumstances of the situation of the war, this state institution which has laid down the importance in the interest of the state at the same time takes the responsibility away from the physician if such an experiment ends fatally and such a responsibility has to be taken by the state." 1

Further questioning elicited the opinion that the only man possibly responsible in this suppositious Case was Himmler, who had the power of life and death over concentration camp inmates, even though the experiment may have been ordered, for example, by the Chief of the Medical Service of the Luftwaffe and executed by doctors subordinated

1. Transcript, p. 2567

to him. Most of the other defendants took a similar position, that they had no responsibility in the selection of the experimental subjects.

This defense is, in the view of the Prosecution, completely spurious. The use of involuntary subjects in a medical experiment is a crime, and, if it results in death, it is the crime of murder. Any party to the experiment is guilty of murder and that guilt cannot be escaped by having a third person supply the victims. The person planning, ordering, supporting, or executing the experiment is under a duty, both moral and legal, to see to it that the experiment is properly performed. This duty cannot be delegated. It is surely incumbent on the doctor performing the experiment to satisfy himself that the subjects volunteered after having been informed of the nature and hazards of the experiment. If they are not volunteers, it is his duty to report to his superiors and discontinue the experiment. These defendants have competed with each other in feigning complete ignorance about the consent of the experimental victims. They knew, as the evidence proves, that the miserable inmates did not volunteer to be tortured and killed. But even assuming the impossible, that they did not know, it is their damnation not their exoneration. Knowledge could have been obtained by the simple expedient of asking the subjects. The duty of inquiry could not be clearer and cannot be avoided by such lame excuses as "I understood they were volunteers" or "Himmler assured me they were volunteers".

In this connection, it should never be lost sight of that these experiments were performed in concentration camps on concentration camp inmates. However little some of these defendants say they knew of the lawless jungles which were concentration camps, where violent death, torture and starvation made up the daily life of the inmates, they are least know that they were places of terror where all persons opposed to the Nazi government were imprisoned without trial, where Jews and Poles and other so-called "racial inferiors" for no crime

whatever, unless their race or religion be a crime, were incarcerated. These simple facts were known during the war to people all over the world. How much greater then was the duty of these defendants to determine very carefully the voluntary character of these experimental subjects who were so conveniently available. True it is that these defendants are not charged with responsibility for the manifold complex of crimes which made up the concentration camp system. But it cannot be held that they could enter the gates of the Inferno and say in effect: "Bring forward the subjects. I see no evil; I hear no evil; I speak no evil." They asked no questions. They didn't inquire of the inmates as to such details as consent, nationality, whether a trial had been held, what crime had been committed, and the like. They did not because they knew that the wretched inmates did not volunteer for their experiments and were not expected to volunteer. They embraced the Nazi doctrines and the Nazi way of life. The things these defendants did were the result of the noxious merger of German militarism and Nazi racial objectives. When, in the face of a critical shortage of typhus vaccines to protect the Wehrmacht in its Eastern invasions, Handloser and his cohorts decided that animal experimentation was too slow, the inmates of Buchenwald were sacrificed by the hundreds to test new vaccines. When Schroeder wanted to determine the limit of human tolerance of sea water, he tread the path well-worn by the Luftwaffe to Dachau and got forty gypsies. These defendants with their own eyes open used the oppressed and persecuted victims of the Nazi regime to wring from their wretched and unwilling bodies a drop of scientific information at a cost of death, torture, mutilation, and permanent disability. For these palpable crimes justice demands stern retribution.

MR. HARDY: Mr. Hardy will continue with the closing statement.

THE PRESIDENT: Counsel, in order not to break into your argument

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when you have started it, the Court will now be in recess for a few moments.

(Thereupon a recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The prosecution may proceed.

MR. HARDY: May it please the Tribunal, before I proceed I request that the footnotes contained in the English copy of the prosecution's closing argument be included in the transcript of the trial -- that is, the court interpreters include the footnotes which we have in the English copy of the closing argument which are not being read here in open court.

THE PRESIDENT: The arguments of counsel will be included in the in the proceedings of the record of the court as contained in the transcript.

MR. HARDY: I will continue, your Honors.

It must not be overlooked that the experiments proved in this case were not haphazard and unrelated crimes. On the contrary, they constituted a well integrated criminal program, in which the defendants planned and collaborated among themselves and with other persons. One thing should be made clear at the outset. Each experiment constituted a criminal conspiracy in and of itself. None of the experiments were formulated and executed by one man. Each required the efforts of a number of men and the cooperation of several agencies. Thus, in the typhus experiments in Buchenwald, the medical services of the Army, Luftwaffe, and SS all played an important role. The measure of the guilt of such defendants as Handloser, Schroeder, Rose, Ganzken, Mrugowsky, Foppendick and Hoven is the total of the crimes committed there. These experiments were, indeed, one continuous crime in which all played a substantial part. For example, the defendant Rose personally initiated experiments in Buchenwald in August 1942 and March 1944 which resulted in the death of ten persons. But he is equally guilty of the several hundred other murders since he joined in and furthered the joint venture.

Thus, it is incontrovertible that each experiment constituted per se a small conspiracy and every participant in it must be found responsible for the sum total of crimes committed in its execution. But it is also clear that these criminal conspiracies overlapped and blended together to form a broad common design. These crimes were systematic and were committed pursuant to a policy, formulated by the leaders of the German medical services, approving of, and ordering, the execution of highly dangerous experiments on human subjects without their consent. The inter-relation and common basis of these crimes is brought into sharp focus by a simple chronological review. The program had its early beginning in May 1941, when Luftwaffe Captain Rascher, aided and abetted by the defendant Welts and an assistant named Kottenhof, made overtures to Himmler for prisoners to be used in high altitude experiments, which, he stated, were so dangerous that "nobody was volunteering". In December 1941, when typhus vaccines were needed for the Wehrmacht's invasion of the East, the defendant Handloser, as Army Medical Inspector, met with Conti, Secretary of State for Health, and Krugowsky, subordinate of the defendant Gensken and Chief of the Hygiene Institute of the Waffen SS, and made the basic decision to test typhus vaccines by experiments on human beings. As a result, by the turn of the year, the criminal typhus experiments, which were to cost the lives of several hundred human beings, were underway in Buchenwald. Dr. Schilling was provided with "human material" for malaria experiments at Dachau in February 1942, through the good offices of Conti, and in the same month at the same place, the defendants Ruff and Bomberg joined partners in the dance of death with Rascher and Welts. In May 1942 at the meeting of the Consulting Physicians of the Wehrmacht, the defendant Rostock lectured on the chemio-therapeutical treatment of wound infections, especially with sulfanilamide. Forty-five days later, the defendant Gebhardt, spurred on by his loss of "Hangman" Heydrich, began his sulfanilamide experiments in Ravensbrück with the assistance of the defendants Fischer and Oberhauser and

the gangrenous cultures furnished by Gensken and Mrugowsky. Under the direction of Grawitz, companion experiments to test the bio-chemical treatment of sepsis, induced by injections of pus, were run simultaneously in Dachau. In August 1942, when the blood of inmates autopsied in the decompression chamber had scarcely dried, the Medical Service of the Luftwaffe ordered Holzloehner, Finke, and Rascher to perform freezing experiments to establish the most effective means of treating prolonged exposure to cold. In November 1942, August Hirt, under the aegis of the recently created Institute of Military Scientific Research of the Ahnenerbe directed by the depraved Sievers, began his murderous gas experiments aided and abetted by Winmer, medical officer of the Luftwaffe. In connection with these same experiments, the defendant Sievers, who was at the same time seeing to it that things ran smoothly with the malaria and freezing crimes, wrote to Rudolf Brandt of his outrage at the suggestion that the wretched victims be paid for. Like the helpful man that he was, Brandt immediately put things straight with Obergruppenfuhrer Pohl, administrative Chief of the concentration camps.

These crimes were not committed as a simple academic pursuit as were some of the more "garden variety" concentration camp atrocities. In October 1942 a great Cold Congress in Nurnberg was attended by the defendants Becker-Freysang, Ruff, Rosenberg, Rose, Schaefer, and Walts, together with nearly 100 representatives of all the medical services in Germany. The meeting was arranged by Anthony and the defendant Becker-Freysang on behalf of the Luftwaffe. Schreiber, one of the principal subordinates of Handloser, was there. Holzloehner and Rascher gave a report on their freezing experiments and it was made clear to all who cared to listen that concentration camp inmates were used as subjects and that deaths had occurred. Schreiber apparently gave his chief Handloser such a glowing report that Holzloehner was invited to a repeat performance at the Second Meeting East of the Consulting Physicians of the Wehrmacht in December 1942. Handloser personally heard the

lecture this time. It was at the same meeting that Ding was ordered by his superior Murgowsky, at the instigation of Handloser's henchmen Schreiber and Killian, to give several of the inmates in Buchenwald an intravenous dose of phenol and report back on the clinical details of the ensuing deaths. These gentlemen were troubled by the observation that some of their soldiers were dying after receiving gas oedema serum and they wanted to ascertain whether it was caused by the phenol content.

At the Third Meeting of Consulting Physicians in May 1943, Gebhardt told of his experiments to the section on surgery. Rostock arranged the program and presided, while Karl Brandt and Handloser were in the seats of honor. What they heard came as no surprise. Gebhardt and Fischer gave a full report on the sulfanilamide experiments down to the last death. Gebhardt was so anxious to spread his guilt somewhat thinner that he emphasized to the Tribunal the complete nature of their report. This proved a little embarrassing to his predecessors in the witness box who were quite sure that nothing had been said about artificial infection or deaths. Karl Brandt had no more than left this meeting when had made arrangements with Grawitz to get inmates at the Sachsenhausen Concentration Camp for the epidemic jaundice experiments by Dohmen, a medical officer of the Army under Handloser. This disease was causing casualties up to 60% in the Wehrmacht units in the East.

At the very same meeting, Ling lectured to the hygiene section of his murderous typhus experiments at Buchenwald. Schreiber presided and the defendants Rose and Mrugowsky were in attendance as well as the Luftwaffe typhus expert Haagen, who, to say the least of it, was exceedingly parsimonious with the truth when he testified before this Tribunal. There is no question that Rose took strong exception to this report. Although his prior and subsequent conduct leave little doubt that it was on scientific rather than moral grounds. In any event, what was good enough for Ling was good enough for Haagen. That very same month he began his own typhus vaccine tests in the Schirmeck Concentration Camp, aided and abetted by Rose and the Medical Service of the Luftwaffe. In a matter of thirty days, two inmates had died as a result. In the fall of 1943, Haagen shifted his activities to the larger camp of Hatzweiler where he continued his criminal work until the late summer of 1944, under the auspices of the defendant Schroeder.

In the fall of 1943, Karl Brandt, as General Commissioner of the Medical and Health Services, undertook personal sponsorship of the phosgene gas experiments of Bickenbach, who had previously worked with Hirt on inmates at Hatzweiler. The Wehrmacht was also interested in these experiments. Brandt received broad powers in the field of chemical warfare in a Fuehrer decree of 1 March 1944. Shortly thereafter he conferred with the defendant Sievers and Hirt on the experiments in Hatzweiler. He personally supplied Bickenbach with laboratory facilities, who, by September 1944, had murdered four Russian prisoners of war.

In June 1944, the defendant Schroeder personally initiated plans for the sea water experiments, with the assistance of his subordinates Becker-Freysing and Schaefer. In a letter to Himmler, through Grewitz, asking for "40 healthy test subjects" for experiments he knew would probably end in deaths, he said that "Earlier already you made it possible for the Luftwaffe to settle urgent medical matters

through experiments on human beings".¹ He concluded by saying: "As it is known from previous experiments, that necessary laboratories exist in the concentration camp Dachau, this camp would be very suitable". The defendant Seigboeck joined in the conspiracy and executed the experiments.

In June 1944, a conference was called at Breslau by the defendant Handloser for the purpose of coordinating jaundice research. Jaundice experts from all branches of the Wehrmacht were present, including Haagen, and Handloser's subordinate Schreiber presided. Experiments on human beings were discussed and a few weeks later Haagen and three other officers of the Luftwaffe began laying plans for experiments on human beings in "Strassbourg or its vicinity", an obvious reference to Natzweiler. That criminal experiments on concentration camp inmates were discussed at the Breslau meeting is clear from the fact that Schreiber personally requested Krugowsky somewhat later to make available inmates in Buchenwald for jaundice experiments by Dr. Dresel.

The foregoing chronological analysis of some of the experiments, while not complete, is sufficient to show that there was a systematic and well integrated program involving medical experimentation on concentration camp inmates without their consent. The demands upon the SS for human guinea pigs had become so extensive that by May, 1944 a central clearing committee had been set up by Himmler. The defendant Gebhardt passed on the medical necessity of the proposed experiment, while Gluecks and Nebe acted as the Valkyries in selecting the sacrificial victims. As early as August 1942, the Institute of Military Scientific Research of the Abwehr under Sievers was created to finance and to furnish equipment, prisoners, and administrative assistance for experiments in which Himmler was especially interested. This criminal program was motivated from two principal sources. Himmler, as head of the SS, provided uncounted victims for the experiments and

¹ No-185, Pros. Ex. 134, R. 483.

thereby gained new prestige and power for his criminal organization. The leaders of the German military and civilian medical services, as the other driving force, ruthlessly seized the opportunity with which they were presented and submitted their scientific problems for solution in the concentration camps. The scientific impetus came from Karl Brandt, Handloser, Schreiber, Hippke, Schroeder, Conti, and their subordinates, among others. Rudolf Brandt and Sievers gave effect to Himmler's approval to furnish the victims and the administrative machinery was handled by them. The SS medical leaders - Grewitz, Gensken, Gebhardt, Mrugowsky, and Poppendick - gave directions to their underlings such as Ling, Hoven, and Fischer, and assisted in the execution of the crimes. Brandt, Blome, and Schreiber extended financial support through the Reich Research Council, which approved an allocation of government funds to enlarge the SS medical service on the ground it had human "experimental material" available. Rostock, as Chief of the Office for Science and Research, classified as "urgent" the criminal research of Hirt, Haagen, and Bickenbach. The Wehrmacht provided supervision and technical assistance for those experiments in which it was most interested. A low pressure chamber was furnished for the high altitude experiments, the services of Wolts, Ruff, Romberg, Rascher, Reisslochner, and Finks for the high altitude and freezing atrocities and those of Becker-Freyseng, Schaefer, and Beiglboeck for sea water. Rose was in and out of the Buchenwald typhus station for the Luftwaffe and checked the work of Haagen at Schirmeck and Natzweiler. Handloser kept an eye on Ling's experiments through Schreiber, Eyer, and Schmidt and furnished him with vaccines and typhus infected lice. He saw to it that the useful results of the crimes were reported to his Consulting Physicians and passed on to the Wehrmacht.

This was the unholy trinity; this was the common design. It was like a gigantic wagon wheel, the spokes of which were the experiments leading into the common hub of the SS which furnished the victims, and all bound together by the policies and orders of the leaders of the

German medical services which formed the outer rim. While the defendants deny that there was a common design or that they participated in it, all seek at the same time the contradictory "protection" of State approval of the experiments. The defendant Rose, broken by proof from his own hand that he participated in the typhus crimes at Buchenwald, gave something of a valedictory when he said:

"This institute had been set up in Germany and was approved by the State and covered by the State. At that moment I was in a position which perhaps corresponds to a lawyer who is, perhaps, a basic opponent of execution, or death sentence. On occasion when he is dealing with leading members of the government, or with lawyers during public Congresses or meetings, he will do everything in his power to maintain his opinion on the subject and have it put into effect. If, however, he does not succeed, he stays in his profession, and in his environment in spite of this. Under circumstances he may perhaps even be forced to pronounce such a death sentence himself, although he is basically an opponent of that set up." ¹

Gebhardt testified that Hitler approved the policy of experimentation on concentration camp inmates. He admitted that these experiments would not have been performed without approval from the top; even Himmler himself sought cover from Hitler. The Prosecution claims no more. This policy of systematic experimentation on involuntary subjects was formulated and executed by these defendants and their accomplices.

This, then, was the medical service of the Third Reich at work. There can be no doubt that these were not a heterogeneous and unrelated group of crimes. They mesh together to form a clear conspiracy. Each experiment in turn ratified its predecessors and gave impetus to its successors. Whatever may be the judgment of this Tribunal on the question of jurisdiction, there was a conspiracy in fact. Since a conspiracy was charged in Count I of the Indictment, it is important to know what a conspiracy comprehends and punishes. Justice Jackson stated in his closing address to the International Military Tribunal that:

¹ Transcript, p. 5467.

"In the conspiracy we do not punish one man for another man's crime. We seek to punish each for his own crime of joining a common plan in which others also participated. The measure of the criminality of the plan and therefore of the guilt of each participant is, of course, the sum total of crimes committed by all in executing the plan. But the gist of the offense is participation in the formulation or execution of the plan. These are rules which every society has found necessary in order to reach men.....who never got blood on their own hands but who lay plans that result in the shedding of blood. All over Germany today, in every zone of occupation, little men who carried out these criminal policies under orders are being convicted and punished. It would present a vast and unforgiveable caricature of justice if the man who planned these policies and directed these little men should escape all penalty." 1

The essence of the crime of conspiracy is two or more persons combining and confederating with the intent and purpose of committing an offense by doing an unlawful act or doing a lawful act in an unlawful manner. It can be established by direct testimony but it may also be inferred from things actually done. It is enough if the minds of the parties meet and unite in an understanding way with the design to accomplish a common purpose which may be established by substantial evidence or by deduction from facts, from which a natural inference arises that the overt acts were in furtherance of a common design, intent, and purpose. The common design is the essence of the crime and this may be made to appear when the parties continuously pursue the same object, whether acting separately or together by common or different means, but ever leading to the same unlawful result. When one or more of the conspirators makes an open declaration and the others thereafter adhere by words or acts, their responsibility is complete and their guilt thereby established for they have become agents ad hoc in the crimes. The conspirators may not know each other or such others' part in the plan, nor, indeed, all the details of the plan itself. He may know only his own part. That is enough if there is an intentional contribution to the whole. It is enough if one had knowledge of the general purpose and joins himself. Each is responsible for all acts done in furtherance of the objects of

1 I.M.T. transcript, p. 14370

the conspiracy and during its life. Once a person joins a conspiracy, he ratifies all that has been done before by oath of the others.¹

What has been said with respect to the common design or conspiracy is, of course, quite pertinent even though the Tribunal decides that it has no jurisdiction over conspiracies to commit War Crimes and Crimes against Humanity. Paragraph 2 of Article II of Law No. 10 reads, in part, as follows:

"Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans and enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime....."

This paragraph, although it does not employ the word "conspiracy" or the phrase "common plan", recognizes the criminal

¹ U.S. v. Borden, 138 F. (2d), U.D.A.7, certiorari denied.

liability of those who were substantially connected with the commission of a crime, even though the final criminal act is committed by someone else. Those who are found to have been connected with crimes in the way specified by the quoted paragraph must be found guilty of the substantive crime itself, which in this case is predominantly the crime of murder. Quite clearly the status of criminal responsibility of a person who "took a consenting part" in or "was connected with plans or enterprises involving" or "was a member of any organization or group connected with" the commission of a crime more than comprehends the criminal liabilities which are held to attach to those who enter into a crime conspiracy. Thus, whether the criminal experimentation program be called a "common design", "conspiracy", or simply "plans and enterprises", these defendants who jointly participated in its execution must be found guilty of the sum total of crimes committed.

THE RESPONSIBLE LEADERS OF THE MEDICAL SERVICES

In view of the clear and overwhelming proof, it can only be concluded that the practice of experimentation on concentration camp inmates without their consent was an organized and systematic program. It is therefore appropriate to consider whether we have in this dock the leaders of the German medical services without whom these crimes would not have been possible. It would be an unforgivable miscarriage of justice to punish the doctors who worked on the victims in the concentration camps while their superiors, the leaders, organizers, and instigators, go free. It has been established beyond controversy that these things could not have happened without cover from the top. Who, then, were these men on the top? Their survivors, with one exception, are all in this dock.

In the number one seat we have the defendant Karl Brandt. He held supreme authority over all the medical services in Germany, both military and civilian. He joined the Nazi Party in January 1932 and the SS in 1934, in which he rose to the rank of Gruppenfuehrer. In the latter year, at the age of 30, he became the attending physician

to Adolf Hitler and retained this position until 1945. His close personal relationship to the Fuehrer explains his rapid rise to power. On the day Poland was invaded in 1939, Hitler ordered Brandt and Philipp Bouhler, the Chief of the Chancellery of the Fuehrer, to carry out the so-called euthanasia program.

Aside from his personal influence and intimate connection with Hitler, Brandt's greatest power in the medical services came from his position as General Commissioner and later Reich Commissioner of the Health and Medical Services. As a result of the disastrous winter campaign in the East in 1941, Hitler established for the first time a medical and health official under his direct control by decree of 28 July 1942. This decree made Brandt the supreme authority over all medical services in Germany. It stated in part as follows:

"3. I empower Prof. Dr. Karl Brandt, subordinate only to me personally and receiving his instructions directly from me, to carry out special tasks and negotiations, to readjust the requirements for doctors, hospitals, medical supplies, etc., between the military and the civilian sectors of the Health and Medical Services.

"My plenipotentiary for Health and Medical Services is to be kept informed about the fundamental events in the Medical Service of the Wehrmacht and in the Civilian Health Service. He is authorized to intervene in a responsible manner."¹

By the same decree chiefs were also commissioned for the medical services of the Wehrmacht and the civilian health sector. The defendant Handloser became Chief of the Medical Services of the Wehrmacht, while Dr. Leonardo Conti, Secretary of State for Health and the Reich Health Leader, was made Chief of the Civilian Health Services. Brandt was the superior of both Handloser and Conti, and through them had extensive powers over the Army, Navy, Luftwaffe, Waffen SS, and civilian medical services. Brandt stood at the apex of power. He was subordinated to no one save the Fuehrer. He was the man to act for the Fuehrer in medical matters. The decree authorized Brandt "to intervene in a responsible

1. ND-080, Pres. Ex. 5, R. 93.

manner" and directed that he be kept informed of "fundamental events". Certainly nothing could be more fundamental than a policy of performing medical experiments involving the torture and death of involuntary human subjects.

On 5 September 1943 Hitler issued a second decree empowering Brandt "with centrally coordinating and directing the problems and activities of the entire medical and health services....." ¹ The order expressly stated that Brandt's authority covered the field of medical science and research. Shortly following the issuance of this decree, the defendant Rostock was appointed by Brandt as Chief of the Office for Science and Research, with plenary powers in the field.

Finally, on 25 August 1944, the Fuehrer elevated Brandt to Reich Commissioner for the Health and Medical Services and stated that in this capacity "his office ranks as highest Reich authority". Brandt's position was thus equivalent to that of a Reich Minister. He was authorized "to issue instructions to the offices and organizations of the State, Party, and Wehrmacht, which are concerned with the problems of the medical and health services". ² It is clear that this decree was issued to resolve a struggle for power between Brandt and Conti. Certainly the decree does no more than give Brandt a more august title and restate his powers, powers which he had already received as early as July 1942. Brandt testified that it merely "strengthened" his position. A Service Regulation issued by Keitel for Handloser, as Chief of the Medical Services of the Wehrmacht, at a time when Brandt was still General Commissioner, provided that Handloser was subject to the "general rules of the Fuehrer's Commissioner General for the Medical and Health Services" and that Brandt had to be informed of the "basic events" in the field of the Medical Services of the Wehrmacht. In a pre-trial affidavit the defendant Handloser stated that after he became Chief of the Medical Services of the Wehrmacht on 28 July 1942

1. NO-081, Proc. Ex. 6, R. 94.

2. NO-082, Proc. Ex. 7, R. 95.

"Brandt was my immediate superior in medical affairs".¹ Schroeder stated that "Karl Brandt, Handloser, and Rostock were informed of the medical research work conducted by the Luftwaffe".² In addition to his position as General and Reich Commissioner of the Health and Medical Services, Brandt was also a member of the Presidential Council of the Reich Research Council, an organization which gave financial support for criminal experiments.

In the number two seat in the defendant Handloser who held supreme power over the Medical Services of all branches of the Wehrmacht. Early in 1941 he was appointed Army Medical Inspector and Army Physician. He held these positions until September 1944, and as such had complete command over the entire Army Medical Services, which was by far the largest of the medical branches of the Wehrmacht. In his capacity as Army Medical Inspector, Handloser had subordinated to him the Consulting Physicians of the Army, the Military Medical Academy, the Typhus and Virus Institutes of the OKH at Gracow and Lemberg, and the Medical School for Mountain Troops at St. Johann. He attained the rank of Generaloberstabsarzt (Lieutenant General), the highest military medical rank.

On 28 July 1942, Handloser was elevated to the newly created position of Chief of the Medical Services of the Wehrmacht. This was the same decree which appointed Brandt General Commissioner, to whom Handloser, on the military side, and Conti, on the civilian side, were subordinated. Handloser was charged with the coordination of the Medical Services of the Wehrmacht and all organizations and units subordinated or attached to the Wehrmacht, including the Medical Services of the Waffen SS. Prior to this decree there were four separate medical

1. NO-443, Pros. Ex. 10, R. 99.
2. NO-449, Pros. Ex. 130, R. 474.

branches of the Wehrmacht, the Army, Luftwaffe, Navy, and Waffen SS, each operating independently of the other. Pursuant to this decree, Handloser was appointed to coordinate and unify their operations and was directly responsible to Keitel as Chief of the High Command of the Wehrmacht (OKW). He had authority over the Chiefs of the Army, Navy, Luftwaffe, and Waffen SS Medical Services, and all organizations and services employed within the framework of the Wehrmacht, and over "all scientific medical institutes, academies and other medical institutions of the Services of the Wehrmacht and of the Waffen SS". He was the adviser of the Chief of the High Command of the Wehrmacht in all questions concerning the Medical Services of the Wehrmacht and of its health guidance. In the field of medical science, his duties were to carry out uniform measures in the field of health guidance, research and combatting of epidemics, and all medical matters which required a uniform ruling among the Wehrmacht, and further, in the evaluation of medical experiences.

One of the principal means used by the defendant Handloser in coordinating scientific research was the joint meeting of Consulting Physicians of the four branches of the Wehrmacht. At the Second Meeting East of Consulting Physicians in December 1942 at the Military Medical Academy, Handloser himself pointed out quite clearly the task of the Chief of the Medical Services of the Wehrmacht in unifying medical scientific research. In addressing the full meeting he said:

"The demands and extent of this total war, as well as the relationship between needs and availability of personnel and material, require measures, also in military and medical fields, which will serve the unification and unified leadership. It is not a question of "marching separately and battling together", but marching and battling must be done in unison from the beginning in all fields.

"As a result, as concerns the military sector, the Wehrmacht Medical Service and with it the Chief of the Medical Services of the Wehrmacht came into

being. Not only in matters of personnel and material — even as far as this is possible in view of special fields and special tasks which must be considered — but also with a view to medical scientific education and research, our path in the Wehrmacht Medical Service must and will be a unified one. Accordingly, the group of participants in this Second Work Conference East, which I have now opened, is differently composed from the First Work Conference in May

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of this year. Then it was a conference of the army; today the three branches of the Wehrmacht, the Waffen SS and Police, the Labor Service and the Organization Todt are participating and unified.

"You will surely permit that I greet you with a general welcome and with the sincere wish that our common work may be blessed with the hoped for joint success.

"I would, however, like to extend a special greeting to the Reich Chief of Health Services, Under Secretary Conti, who holds the central leadership of medical services in the civilian sector. I see in his presence not only an interest in our work themes, but the expression of his connection with the Wehrmacht Medical Service and his understanding of the special importance of the Wehrmacht in the field as well as at home. I need not emphasize that we are as one in the recognition of the necessity to assure and ease the mind of the soldier, that he need not worry about the physical well being of the homeland as far as this is within the realm of possibility in wartime." 1.

Again, at the Fourth Meeting of Consulting Physicians in May 1944, the defendant Karl Brandt stressed the importance of Handloser's position, saying:

"Generaloberstabsarzt Handloser, you a soldier and a physician at the same time, are responsible for the use and the performance of our medical officers.

"I believe, and this probably is the sole expectation of all concerned, that this meeting which today starts in Hohenlychen will be held for the benefit of our soldiers. The achievements to date of your physicians Herr Generaloberstabsarzt, confirm this unequivocally, and their readiness to do their share makes all of us proud and - I may also say - confident.

"It is good simply to call these things by their names and to look at them as they are. This meeting is the visible expression of it - it is, it shall be and it must be so in every respect; the consulting physicians are gathered around their Medical Chief. When I look at these ranks, you Generaloberstabsarzt

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Handloser, are to be envied; medical experts, with the best and most highly trained special knowledge, are at your disposal for care of the soldiers. In reciprocal action between yourself and your medical officers, the problem of our medical knowledge and capacity are kept alive." 1.

This was no accolade paid to a man without power and influence. If Handloser is not responsible for the crimes committed by the Medical Services of the Wehrmacht, and especially of the Army and Luftwaffe, then no one is responsible.

In the number three seat we have the defendant Rostock who, as Brandt's special deputy, was charged with the task of "centrally coordinating and directing the problems and activities of the entire Medical and Health Services" in the field of science and research. Even prior to his appointment to that position in the Fall of 1941, Rostock was one of the responsible leaders of the German medical profession. In 1942 he was appointed Dean of the Medical Faculty of the University of Berlin. In the same year he became Consulting Surgeon to Handloser as the Army Medical Inspector. He attained the rank of Brigadier General (Generalarzt). As Chief of the Office for Science and Research under Brandt, it was Rostock's task to coordinate scientific research in Germany. He received reports as to the issuance of research assignments by the various agencies in Germany, and determined which of such assignments should be considered "urgent". He also served as Brandt's alternate on the Reich Research Council.

In the number four seat we have the defendant Schroeder, who from 1 January 1944 until the end was the Chief of the

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Medical Services of the Luftwaffe. From 1935 until February 1940 Schroeder was Chief of Staff to his predecessor, Erick Hippke as Luftwaffe Medical Inspector. From February 1940 until January 1944 he served as Air Fleet Physician of Air Fleet II, when he replaced Hippke as Chief of the Medical Services of the Luftwaffe. Simultaneously he was promoted to the rank of Generaloberstabsarzt. As Chief of the Medical Services of the Luftwaffe, all medical officers of the German Air Force were subordinated to him. His position and responsibility are clear and unequivocal.

In seat number five is the defendant Genzken who, as Chief of the Medical Service of the Waffen SS, was one of the highest ranking medical officers in the SS. He joined the Nazi Party in 1926 and in 1936 he went on active duty with the SS in the Medical Office of the SS Special Services Troops (SS-Vorfuegungstruppe), which subsequently became the Waffen SS. In the Spring of 1937 the Medical Office (Sanitatsamt) of the SS was enlarged and split into two departments. Genzken was made Director of the department charged with the supply of medical equipment to and the supervision of medical personnel in the concentration camps. In this capacity he was the medical adviser to the notorious Eicke, predecessor of Pohl as the commander of all concentration camps. Sachsenhausen, Dachau, Buchenwald, Mauthausen, Flossenbug and Neuengamme, among others, were under the medical supervision of Genzken. Few men could have been better advised as to the systematic oppression and persecution of the helpless prisoners of these institutions.

In May 1940; Genzken became Chief of the Medical Office of the Waffen SS in the SS Operational Headquarters, with

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the rank of Oberfuehrer (Senior Colonel). The SS Operational Headquarters was subordinated to Gruppenfuehrer Hans Juettnar and was one of the twelve main offices of the Supreme Command of the SS. While Juettnar was Genzken's military superior, his technical or medical superior was Reichsarzt-SS Grawitz for whom he served as deputy on many occasions. In 1942 his position became known as Chief of the Medical Services of the Waffen SS, Division D of the SS Operational Headquarters. He attained the rank of Gruppenfuehrer in the SS and Generalleutnant of the Waffen SS (Lieutenant General). Among the offices subordinated to Genzken was that of the Chemical and Pharmaceutical Service under Blumenreuter, and Hygiene under the defendant Mrugowsky. Mrugowsky was attached to Genzken's office as a hygienist in 1940 and was at the same time Chief of the Hygiene Institute of the Waffen SS which, in turn, was subordinated to Genzken. On 1 September, 1943, the Medical Services of the SS was reorganized and, among other things, Blumenreuter, Mrugowsky, and the Hygiene Institute of the Waffen SS were transferred to the Office of the Reichsarzt SS, Grawitz. Thereafter the direct subordination was to Grawitz rather than to Genzken.

And then there is the defendant Blome, Gruppenfuehrer (Major General) in the SA, Deputy Reich Health Leader, Deputy Leader of the Reich Chamber of Physicians and the National Socialist Physicians Association, Representative for the Department of Medical Study, Plenipotentiary in the Reich Research Council, and Chief of Research on Bacteriological Warfare. As the closest associate of Conti, he cannot be omitted from the list of the powerful

Conti was the highest authority in the field of civilian health administration. The decree of 26 July 1942, signed by Hitler, concerning the reorganization of the medical services, defines the position of Conti as follows:

"In the field of civilian health administration the Secretary of State in the Ministry of Interior, and the Chief of the Health Administration of the Reich (Reichsgesundheitsfuhrer), Dr. Conti, is responsible for coordinated measures. For this purpose he has at his disposal the competent departments of the highest Reich authorities and their subordinate offices."¹

There was not a single medical question which did not reach the Reich Health Department of the Nazi Party and the Reich Chamber of Physicians, subordinated to which were all physicians in Germany, with the exception of those on active duty with the armed forces and in the SS. As a member of the Reich Research Council, Bieme was personally connected with plans and enterprises involving criminal medical experimentation.

These were the responsible leaders of the Medical Services of Germany. Who, then, is missing from this illustrious gathering? During the course of the trial, we have frequently heard mentioned the names of Conti and Grawitz. Indeed, the defendants would have us believe that in these two men, together with Hitler and Himmler, resided the exclusive responsibility for the manifold crimes with which we are here concerned. I hardly need call attention to the fact that all are dead. All of them took their own lives rather than face the bar of justice. No one can deny that these men were, indeed, guilty. But this in no way serves to exonerate these defendants, who all played important roles in the mad scheme. It is a curious thing that not one of the defendants has pointed an accusing finger at a living man. If they are to be believed, all the guilty parties to these crimes are dead. According to them, justice must seek retribution only from the cadavers. The Luftwaffe

1. NG-OSO, Proc. Ex. 5, R. 93

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defendants have been strangely silent as to Hippke, who, but for a belated capture, would have a prominent seat in the dock. Those defendants who worked with the dead criminals — such as Gebhardt, Mrugowsky, and Poppendick with

Grewitz, and Blome with Conti - ask the Tribunal to say that their association was honorable and pure, that their work was in another field, that their masters' crimes came as a great surprise, and were never known to them. The evidence proves, however, that they not only knew of and supported these crimes, but also took a personal part in them.

In connection with the responsible positions of these defendants, and most particularly of Karl Brandt and his assistant Rostock, Handloser, Schroeder, Gensken, and Blome, I wish to call to the Tribunal's attention the decision of the Supreme Court of the United States in the case of In re Yamashita.¹ On 25 September 1945, Yamashita, the Commanding General of the Fourteenth Army Group of the Imperial Japanese Army in the Philippine Islands was charged with violation of the laws of war. He thereafter pleaded not guilty, was tried, found guilty as charged and sentenced to death by hanging. A petition for a writ of habeas corpus was filed with the Supreme Court purporting to show that Yamashita's detention was unlawful for the reason, among others, that the charge preferred against him failed to charge him with a violation of the laws of war.

The charge stated that Yamashita, between October 9, 1944 and September 2, 1945, in the Philippine Islands, "while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its Allied and dependencies, particularly the Philippines; and he thereby violated the laws of war". The military commission which tried Yamashita found that the atrocities and other high crimes had been committed by members of the Japanese armed forces under his command, that they were not sporadic in nature but in many cases were methodically supervised by Japanese officers, and that during the

1 68 Sup. Ct. 340 (1946).

period in question Yamashita failed to provide effective control of his troops as was required by the circumstances. The Supreme Court stated the question for their decision in the following language:

"It is not denied that such acts directed against the civilian population of an occupied country and against prisoners of war are recognized in international law as violations of the law of war But it is urged that the charge does not allege that petitioner has either committed or directed the commission of such acts, and consequently that no violation is charged against him. But this overlooks the fact that the gist of the charge is an unlawful breach of duty by the petitioner as an army commander to control the operations of the members of his command by 'permitting them to commit' the extensive and widespread atrocities specified. The question then is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result".

The Court held that the charge was sufficient and that the law of war "plainly imposed on the petitioner, who at the time specified was military governor of the Philippines, as well as commander of the Japanese forces, an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population. This duty of a commanding officer has heretofore been recognized, and its breach penalized by our own military tribunals".

This decision is squarely in point as to the criminal responsibility of our defendants in this dock who had the power and authority to control the agents through whom these crimes were committed. It is not incumbent upon the Prosecution to show that this or that defendant was familiar with all of the details of all of these experiments. Indeed, in the Yamashita case, there was no charge or proof that he had knowledge of the crimes. In the case before the International Military Tribunal, proof was submitted that the Reichsbank, of which the defendant Funk was president, had received from the SS the personal belongings

of victims who had been exterminated in concentration camps. In that connection the Tribunal said in its Judgment:

"Funk has protested that he did not know that the Reichsbank was receiving articles of this kind. The Tribunal is of the opinion that he either knew what was being received or was deliberately closing his eyes to what was being done".¹

But we need not discuss the requirement of knowledge on the facts of this case. It has been repeatedly proved that those responsible leaders of the German medical services in this dock not only knew of the systematic and criminal use of concentration camp inmates for murderous medical experiments, but also actively participated in such crimes. Can it be held that Karl Brandt had no knowledge of these crimes when he personally initiated the jaundice experiments by Dolman in the Sachsenhausen Concentration Camp and the phosgene experiments of Bickenbach? Can it be found that he knew nothing of the criminal euthanasia program when he was charged by Hitler with its execution? Can it be said that Handloser had no knowledge when he participated in the conference of 29 December 1941 where it was decided to perform the Buchenwald typhus crimes, when reports were given on criminal experiments at meetings called and presided over by him? Was Rostock an island of ignorance when he arranged the program for and presided over the meetings at which Gebhardt and Fischer lectured on their sulfanilamide experiments, when he classified as "urgent" the criminal research of Hirt, Haagen, and Bickenbach? Did Schroeder lack knowledge when he personally requested Ressler to supply him with inmates for the sea water experiments? Can it be found that Gonsken had no knowledge of these crimes when the miserable Dr. Ding was subordinated to and received orders from him in connection with the typhus experiments in Buchenwald, when his office supplied Rascher with equipment for the freezing experiments? Was Bloem insufficiently informed in the fact of proof that he collaborated with Rascher in the blood coagulation experiments, issued a re-

1 Trial of the Major War Criminals, Vol. 1, p. 306.

search assignment to him on freezing experiments and to Hirt on the gas experiments, as well as performed bacteriological warfare and poison experiments himself?

No, it was not the lack of information as to the criminal program which explains the culpable failure of these men to destroy this Frankenstein's monster. Nor was it lack of power. Can anyone doubt that Karl Brandt could have issued instructions to Handloser and Conti that doctors subordinated to them were not to experiment on concentration camp inmates. It is no excuse to say that Hitler and Himmler approved the policy and that his efforts may have failed. Certainly they approved it. But the fact is that Brandt also approved of and personally participated in the program. He was the "highest Reich authority" in the medical services, not Himmler. The medical services were Brandt's primary function, while Himmler had a few other tasks to keep him busy, such as running the SS, the Ministry of Interior, the German Police, and the Home Army, to mention a few.

Nothing could have been easier for Handloser than to issue a general directive that officers of the Medical Services of the Wehrmacht were to keep out of concentration camps. If he could not have done so, then we must conclude that no one could have. Handloser had no peer in the military medical services. And what Handloser could have done for all branches of the Wehrmacht, Schroeder, Gonsken, and Blome could have done with respect to the Luftwaffe, the Waffen SS, and the Reich Health Department.

The conclusion is inescapable that the crimes of these responsible leaders is a hundred fold greater than that of the wretches who executed the murderous experiments in the concentration camps. Theirs was the power, the opportunity, and the duty to control and their failure is their everlasting guilt.

Dr. Hochwald will continue the presentation for the prosecution.

BY DR. HOCHNAID:

May it please the Tribunal:

This Tribunal is faced with no difficult legal questions as to whether the acts proved in this case constituted crimes. Many of the medical experiments with which this case is concerned have long since been held to have been criminal by a number of different courts. The International Tribunal stated that:

"The inmates were subjected to cruel experiments at Dachau in August 1942, victims were immersed in cold water until their body temperature was reduced to 28° Centigrade, when they died immediately. Other experiments included high altitude experiments in pressure chambers, experiments to determine how long human beings could survive in freezing water, experiments with poison bullets, experiments with contagious diseases, and experiments dealing with sterilization of men and women by X-rays and other methods." ¹

The International Military Tribunal held that the foregoing experiments constituted War Crimes and Crimes against Humanity.

In the case against Erhard Milch, recently concluded before Military Tribunal No. II, the high altitude and freezing experiments performed at Dachau were adjudged to be crimes. Similarly, in U.S. vs. Weiss et al., tried before a Military Commission in Dachau, a large number of Dachau concentration camp officials were found guilty on proof including the high altitude, freezing, malaria, sepsis, and seawater experiments. Dr. Claus Schilling was sentenced to death for his part in the malaria experiments. In a recent case in the British Zone concerning atrocities committed in the Ravensbruck Concentration Camp, Schoidlansky, Rosenthal, and Treite, who were camp doctors in Ravensbruck, were all tried and sentenced to death, in part on the basis of evidence of the sulfanilamide and bone, muscle, and nerve regeneration experiments which were performed by the defendants Gebhardt, Fischer and Oberhauser.

The law with respect to the criminality of the so-called euthanasia program in the Third Reich is equally clear. This Tribunal is not called upon to define with juridical nicety what a state may lawfully legislate

¹ Trial of the Major War Criminals, Vol. 1, p. 252.

with respect to euthanasia. The Prosecution asks only that this Tribunal find, as other Tribunals have already held, that there was no valid law in the Third Reich permitting euthanasia and that the execution of persons under the guise of euthanasia, with the connivance and assistance of the defendants Karl Brandt, Brack, Blome and Hoven, constituted the crime of murder and was a War Crime and Crime Against Humanity. Again, the foremost authority on the legality of euthanasia as practiced under the Nazis is in the Judgment of the International Military Tribunal. It was there held that:

"During the war nursing homes, hospitals, and asylums in which euthanasia was practiced as described elsewhere in this judgment, came under Frick's jurisdiction. He had knowledge that insane, sick, and aged people, 'useless eaters', were being systematically put to death. Complaint of these murders reached him but he did nothing to stop them. A report of the Czechoslovak War Crimes Commission estimated that 275,000 mentally deficient and aged people, for whose welfare he was responsible, fell victim to it."¹

This finding draws no distinction between German nationals executed under the program and non-German nationals. These executions are described with the word "murder" and constitute War Crimes and Crimes against Humanity under the Charter and Control Council Law No. 10. This was one of the principle crimes which led to the judgment of guilty and the sentence of death against Frick. How much greater is the guilt of the defendant Karl Brandt.

The review of the Deputy Theater Judge Advocate in the case of the U.S. vs. Klein, Wahlen, et al., held at Wiesbaden,

1 Ibid., Vol. 1, p. 301; see also p. 247.

Germany from 8 through 15 October 1945, is a clear precedent that the execution of non-German nationals pursuant to the euthanasia program constituted the crime murder. Since the end of the war, German and Austrian courts have repeatedly held that the killing of persons of any nationality under the guise of euthanasia was in violation of German Criminal Code and punishable as murder. It is interesting to note that in a case before the District Court for Criminal Cases in Vienna in July 1946, Dr. Ernst Illing, who was charged with putting to death children under the euthanasia program, testified that he was called up by Hefelmann, one of the subordinates of the defendant Brack, and given a letter signed by Adolf Hitler according to which the defendant Karl Brandt was given the task of putting into effect and working out administrative regulations for the killing of incurable idiotic children. Illing stated that after examination and decision by a scientific medical committee, Dr. Brandt, or the deputy designated by him, would give the order in each individual case. Illing was found guilty as charged and sentenced to death by hanging.

The Court of Assizes in Berlin, in the session on 25 March 1946, found the defendants Hilde Bernicke and Helene Wiczorek guilty of murder and sentenced them to death for their activities in the euthanasia program. The Court of Appeals in the same case rejected the appeals of both defendants. The court stated that, "It cannot be mistaken that the defendants Bernicke and Wiczorek are only the last links of a long chain, and that they were preceded by persons whose guilt is still greater." In Karl Brandt and Victor Brack we have in this dock the first and third links in that long chain. The second link, Mr. Bouhler, has found his salvation in self destruction with a time bomb. Not far behind in this chain of organized mass murder was the defendant Elzenc and while Hoven may not have sat among the leaders, he was more tangibly rewarded by way of bribes as the paid killer of Buchenwald.

Defenses

Time does not permit a detailed analysis of the proof against these defendants. The Prosecution is filing with the Tribunal briefs against each of the defendants, and I shall therefore restrict myself to a few observations about the common defenses and a number of the more interesting specific defenses.

The defense evidence comes from three main sources — affidavits, witnesses, and testimony of the defendants. The overwhelming bulk of the defense documents consists of affidavits. These, for the most part, are affidavits as to character, which are replete with such statements as ".....I cannot imagine that he approved or even knew of the 'scientific' experiments which scorn all humanity and all medical ethics."¹ Then there was a great flood of affidavits swapped around among the defendants themselves, which usually take the form of saying, in effect, "I didn't mean what I said about you before the trial began." There is scarcely a defendant in the dock who was not the grateful beneficiary of a few kind words from that resistance worker Sievers. This reached the extreme when several defendants submitted affidavits in their own behalf.

When one sifts through this mountain of affidavits, a small residue is finally reached which bears, to a greater or lesser degree, upon the ultimate facts in issue. These we find are, in the most part, sworn to by parties to the very crimes which they seek to explain away. Among them, to name a few, are statements by Miss Crodel, assistant to Haagen in the Netzweller typhus experiments; Hlumenreuter, chief of the office for Chemical and Pharmaceutical Service under Genzken and supplier of equipment for a number of experiments, including the sulfanilamide and freezing crimes; Cramer, Chief of the Medical School for Mountain Troops at St. Johann under Handloser, and a collaborator with Rascher; and Vorkennel, chief of the Experimental Department V in Leipzig and a collaborator of Poppendick in the Buchenwald typhus experiments. Such affidavits

1. Handloser Ex. 49

lack any credibility whatever. Vonkennel, to give a specific case, solemnly assured us in his sworn statement that his Research Department V "never had anything to do with the hormone experiments of Dr. Vaernet, with typhus, or with experiments concerning burns".¹ However, in a letter from Poppendick to Mrugowsky, which was submitted by the Prosecution after Herr Vonkennel's affidavit, he requested that a drug developed by Vonkennel be tested as to its therapeutical effect on typhus in the experimental station in Buchenwald and concluded his letter by stating that:

"Professor Dr. Vonkennel considers it very advisable that Dr. Ding should call on him in his clinic in Leipzig for the purpose of discussing this rather different therapy. The necessity for absolute secrecy is stressed to all institutions concerned."²

I need not remind the Tribunal that the drug was in fact sent to Buchenwald for testing in the original typhus experiments.

Then there are the affidavits which attempt to explain away this or that document which shows the crime on its very face. Schroeder and Becker-Freysong, finding themselves in this embarrassing dilemma with respect to the report on the secretar conference of 19 and 20 May 1944, obtained from the obliging Christensen, who signed the damning report, an answer to their figurative appeal to "say it ain't so". Christensen in his sworn statement said, in effect, that the report was drawn up from memory several days after the event by his assistant Schickler, who was really a pretty stupid fellow anyway and was not apt to understand or remember much which went on in the meeting, that although he (Christensen) signed the report he didn't read it, and in any event Schroeder's office called him after their receipt of the report and pointed out numerous, but unspecified, mistakes, and that he didn't change the report because it was superseded by a latter meeting.

Yes, it was all sweetness and light, if one finds if possible to

1. Poppendick Ex. 7

2. NO-1184, Pros. Ex. 476, R. 5639

believe the statements of these parties to the crimes. What has been said with respect to the defense affidavits is also true of the defense witnesses. Those few who were in a position to know what they were talking about were testifying as much for themselves as for the defendants. It is patently impossible to deal with the testimony of all these witnesses, but one may take Bernhardt Schmidt and Eugene Haagen as typical cases. The Ding Diary on the typhus experiments in Buchenwald proves that on 6 February 1943, Dr. Eyer of the Typhus and Virus Institute of the OKH in Cracow, which was subordinated to Handloser, and Dr. Schmidt, a hygienist attached to Handloser's staff, inspected the typhus experimental station. This entry in the Ding Diary was corroborated by the work report of the Typhus and Virus Institute of the Laffen SS in Buchenwald for the year 1943. Schmidt was called as a witness for the defendant Handloser and testified that he and Eyer made the long trip to Buchenwald for the very important purpose of demonstrating to certain SS doctors, whom he could not name, how a glass container of yellow fever vaccine should be broken open. Although Eyer and Schmidt were very much interested in typhus problems, and although there was a typhus experiment in progress in Buchenwald on the very day they were there, Dr. Schmidt asks the Tribunal to credit his testimony that they knew nothing of that. Even the defendant Rose found Dr. Schmidt's testimony somewhat hard to accept. He said: "Bernhardt Schmidt's testimony is clear proof to me what sort of nonsense a witness can say when he is under the pressure of fear and is afraid he will express himself to publicity and to the public eye by his testimony".¹

Eugene Haagen, who was called principally on behalf of Schroeder, Rose and Becker-Freyseng, to explain his typhus experiments in Schir-mock and Buchenwald, told an equally incredible story. He carried out vaccinations in these concentration camps only because the camp commander feared an epidemic and Haagen wished to do what he could to avoid this

1. Transcript, p. 6201 - 2.

danger. Although there was insufficient typhus vaccines in Germany to vaccinate all personnel especially exposed to the disease, Haagen showed admirable concern for the concentration camp inmates. He affirmed to the Tribunal time and again that he carried out no vaccinations in Schirmeck after May 1943 and in Natzweiler after February 1944. He testified that the Prosecution witness Hirtz perjured himself when he said that two of the inmates used by Haagen as experimental subjects in Schirmeck in the Summer of 1943 died. Haagen was squarely impeached on these and other significant points by the notes on his own typhus experiments, which he identified as having been written by Miss Crodel, his trusted assistant for many years. The entry for 6 July in these notes proves that on that day Haagen was in Schirmeck for the purpose of withdrawing blood from ten inmates who had been used to test a new living typhus vaccine. The entry gives the serum titer value of 8 of the experimental subjects, and is concluded with the laconic note "the other two were not here any more".¹ Thus, it would seem to even the most critical observer that the testimony of Hirtz, who personally sewed up the bodies of these two inmates in paper bags and delivered them for cremation, is somewhat more reliable than that of Haagen. The Crodel notes show that not only did Haagen conduct experiments in Schirmeck after May 1943, but that he was still doing so as late as January 1944. With respect to the criminal experiments in Natzweiler which he swore were finished in February 1944, the entry for 25 May 1944 states that 30 persons were inoculated in Natzweiler "...during the incubation period (a transport containing also sick people) 13 became sick in the period from 29 May to 9 June, of these 2 died".

Insufficient time is available to give the perjurious testimony of Haagen the attention it so richly deserves. But I think it fair to say by way of summary that substantially the only truthful answer he gave to questions propounded both by the defense and prosecution was when

1. NO-3852, Pros. Ex. 521, R. 9660

my distinguished opponent, Dr. Tipp, opened the examination by saying: "Your name is Dr. Eugene Haagen. You were born on the 17 June 1898 in Berlin. At present you are a prisoner in the court prison in Nurnberg. You are a doctor of medicine by profession and your speciality is hygiene and bacteriology", to which the witness responded: "Yes, that is correct."

That other great source of defense proof — the testimony of the defendants themselves — must also be described, if one wishes to be charitable, as not above reproach. How many times have the defendants said, "I have heard of that for the first time here in Nurnberg." This propensity for perjury on the part of the defendants was typified by the "highest Reich authority" in the medical services, Karl Brandt. Under questioning during cross-examination as to his connection with the phosgene gas experiments performed by Otto Bickenbach, Brandt testified that this research came to his attention in the fall of 1943 on the occasion of a visit to Strassbourg to see a cyclotron; that later he helped Bickenbach to obtain a laboratory for his work; that he assisted him in obtaining experimental animals even to the extent of having them flown from Spain; that Bickenbach did not conduct experiments on human beings; that he helped him in 1944 after the laboratory had been established in the vicinity of Strassbourg. The defendant Rostock was with Brandt when he saw Bickenbach in 1943 and later classified his research as "urgent". The Sievers Diary for 1944 proves that Bickenbach was performing his work under the control of Brandt. The entry for 2 February states that:

"....met Prof. Bickenbach in Karlsruhe, and he advises that he has put his research work under the control of General Commissioner Prof. Dr. Brandt."²

Brandt admitted that he was in Natzweiler with Bickenbach but insisted that, strangely enough, only animal experiments were conducted in this concentration camp. Evidence submitted by the Prosecution following this

1. Transcript p. 9409

2. 3546-PS, Pros. Ex. 123, R. 2629

cross-examination proved beyond controversy that Brandt was advised of the details of Bickenbach's criminal experiments on Russian prisoners of war and that, indeed, this research was carried out with his support. An affidavit from Bickenbach himself states that he discussed the necessity of carrying out phosgene gas experiments on human beings with

Brandt before they were performed and that Brandt later advised him that the experiments had to be executed. The reports by Bickenbach on his experiments were all addressed to Brandt as Commissioner General of the Health and Medical Services. They show on their face that the experiments were performed on forty Russian prisoners of war and that four were killed as a result.

The defendant Gebhardt, who figuratively beat his chest and loudly proclaimed his willingness to tell the full truth, was not above false testimony on his own behalf as well as a few gratuitous perjuries for his colleagues Gensken and Krugovsky, among others. Gebhardt, while assuming responsibility for the sulfanilamide experiments on Polish women in the Ravensbrueck Concentration Camp, attempted to dissociate himself from the vivisections performed in the course of the bone, muscle, and nerve experiments. He testified that his sulfanilamide experiments were completed by December 1942 and he had no further connection with experimental work in Ravensbrueck. The affidavit of Fritz Suhren, Camp Commander of Ravensbrueck, squarely contradicts Gebhardt in that regard. He stated that in the beginning of 1943 he contacted Gruppenfuehrer Mueller of the RSHA to have the experiments stopped because, among other reasons, they could not be kept secret, and that Mueller agreed. A short time later an assistant of Gebhardt's requested additional women for experimental purposes which Suhren refused. That same evening Gebhardt reprimanded Suhren and threatened to submit the matter to the Reichsfuehrer. Sometime later Suhren was forced to go to Hohenlychen and apologize to Gebhardt, as he puts it "in a very humiliating way". He was ordered to make three additional women available for Gebhardt's experiments. No one who has had occasion to observe Gebhardt's vain and overbearing manner in this courtroom can doubt the truth of Suhren's statements.

In his zealotness to protect his fellow defendants and heap all the guilt on Grawitz, Gebhardt testified that neither the Hygiene

Institute of the Waffen SS nor the defendant Krugowsky, who at that time was subordinated to Gensken, played any part in the sulfanilamide experiments, and that the infection material was sent to him by Grawitz. Gensken and Krugowsky, needless to say, ardently supported Gebhardt on this point. A preliminary report by Gebhardt on these experiments, certified as a true copy by Grawitz's assistant Poppendick, proves precisely the contrary. It states that "SS Oberführer Dr. Blumentreter put the complete surgical instrumentations and medicamentations at my disposal. SS Standartenführer Krugowsky put his laboratory and co-workers at my disposal." The report also states that:

"Since in this experiment no definite gangrene could be produced clinically speaking, yet its picture did not in any way correspond to the one known in war-surgery, after further consultation with the collaborators in the Hygiene Institute of the Waffen SS the vaccine was changed by adding wood shavings."

CAPTAIN HOOFWALD: The Prosecution requests an adjournment for noon recess at this time to permit the interpreters to complete the translation of the documents.

THE PRESIDENT: The Tribunal will now be in recess until 1:30 o'clock.

(A recess was taken until 1330 hours.)

AFTERNOON SESSION

(The hearing reconvened at 1330 hours, 14 July 1947)

DR. ROCHWALD: May it please the Tribunal, even the most eminent scientist in the dock, the defendant Rose, tried to shield his guilt by a tissue of lies. The entries in the Ding Diary for 19 August 1942 and 8 March 1944 prove that typhus experiments were carried out in Buchenwald by Ding at the suggestion of Rose. Ten inmates were killed during the course of these experiments. Rose expressly denied the accuracy of these entries in the Ding Diary. He denied ever having sent vaccine to Hrugowsky or Ding to have tested in Buchenwald. He denied that Hrugowsky ever asked him for vaccines to be used in typhus experiments or that he ever negotiated with Hrugowsky in that regard. Hrugowsky has cheerfully testified that he, also had nothing whatever to do with Ding's experiments in Buchenwald. He stated that: "If he had come to me I would have sent him on to someone else. I would have said, 'My dear man, that does not have anything to do with me'." The perjurious testimony of these two defendants was clearly revealed by the subsequent introduction of the correspondence between them on the very experiments with which they denied any connection. On 16 May 1942 Hrugowsky wrote to Rose as follows:

"The Reich Physician SS and Police has consented to the execution of experiments to test typhus vaccines. May I therefore ask you to let me have the vaccines."

"The other question which you raised, as to whether the louse can be infected by a vaccinated typhus patient, will also be dealt with. In principle, this also has been approved. There are, however, still some difficulties at the moment about the practical execution, since we have at present no facilities for breeding lice."

"Your suggestion to use Glascha had been passed on to the Personnel Department of the SS Medical Office. It will be given consideration in due course."

This latter forms the basis for the experiments carried out by Ding in Buchenwald on 19 August 1942 as reported in the Ding Diary.

1. NO-2734, Pros. Ex. 473, R. 5622.
2. NO-1754, Pros. Ex. 491, R. 6460.



These defendants were again thoroughly impeached by the letter of Rose to Mrugowsky of 2 December 1945 which reads, in part, as follows:

"At present I have at my disposal a number of samples of a new murine virus typhus vaccine which was prepared from mice livers and proved in animal experiments to be quantitatively a 1000 times more effective than the vaccine prepared from mice lungs. To decide whether this first rate murine vaccine should be used for protective vaccination of human beings against lice typhus it would be desirable to know if this vaccine showed in your and Ding's experimental arrangement at Buchenwald an effect similar to that of the classic virus vaccines.

"Would you be able to have such an experimental series carried out? Unfortunately I could not reach you over the phone. Considering the slowness of postal communications I would be grateful for an answer by telephone."1

This letter in turn substantiates the entry in the Ding Diary for 8 March 1944.

These defendants, without exception, showed a very remarkable practice of economizing in the use of truth. The record is full of their outright false statements, double talk, fantastic explanations, absurd professions, dissimulations, and evasions. We have not even been spared the experience of at least one instance of deceitful and contemptuous alteration of original documents in a vain attempt to mask the truth. These things typify the philosophy of the National Socialists. As Justice Jackson said:

"Then for years they have deceived the world, and masked falsehood with plausibilities, can anyone be surprised that they continue the habits of a lifetime in this desk? Credibility is one of the main issues of this trial. Only those who have failed to learn the bitter lessons of the last decade can doubt that men who have always played on the unsuspecting credulity of the generous opponents would not hesitate to do the same, now."2

One of the common defenses which has been utilized rather extensively in this case is a variation of the old "shell game" — now you see it, now you don't. This comes into most active play when we have a criminal who had two or more titles. Thus, for example, Haagen was simultaneously

1. ND-1186, Pres. Ex. 492, H. 6463
2. I.M.T. Transcript, p. 14377.

Consulting Hygienist to Air Fleet Reich with the rank of Stabsarzt and the Director of the Hygiene Institute of the University of Strassbourg. Also, Generalarzt Schreiber, one of the principal subordinates of Handloser as Army Medical Inspector, was Commander of the Scientific Group of the Military Medical Academy and at the same time Plenipotentiary for the Combatting of Epidemics in the Reich Research Council. In the face of proof that both of these men engaged in a variety of crimes, the incriminated defendants have made the effort to hide the pea which is the crime under the shell for which they deny responsibility, while at the same time hopefully ignoring the obvious fact that the pea is under both shells. Thus, Schroeder, Rose and Becker-Freyseng would have the Tribunal make the fantastic finding that the Rector of the University of Strassbourg was exclusively Haagen's boss and, if he did anything wrong, it was the Rector's responsibility. Handloser takes a similar line with the very unpopular Schreiber, and by some wondrous working of fate, every time Schreiber was sponsoring a criminal experiment he was acting in his capacity as a member of the Reich Research Council. Blome, according to his story, was only deputy to the "good" Conti while the "bad" Conti went his criminal way without the assistance of his chief collaborator. Poppendick and Grawitz had the same unique relationship. Cenzken and Hrugowsky perform a similar bi-section of Ding; while his right hand was in the vaccine production plant at Buchenwald under their command, his left hand performed the criminal typhus experiments at the direction of Grawitz, and never the twain did meet. I will not consume the time and patience of this Tribunal by pointing up the wealth of evidence which proves that Haagen, as he indeed admitted, and Schreiber and Ding were performing their criminal research with the knowledge and active support of these defendants who are now so anxious to disown them. The Prosecution does not dissent from the consensus that other persons are also guilty of these crimes, including most certainly the Rector of the University of Strassbourg and the members of the Reich Research Council. After all, we

have in Karl Brandt and Blome, two of the six doctors who were members of the Reich Research Council. But the fact that other persons are equally guilty in no way serves to exculpate these defendants. The fact that these criminal experiments were performed with the knowledge and assistance and for the benefit of several different agencies only goes to prove that they were executed pursuant to a common design. Thus, the report on the first typhus experiment in Buchenwald, which cost the lives of five inmates, was sent by Hrugowsky to Conti as Reich Health Leader, in which capacity Blome was his deputy, Grawitz, Genken, Eyer of the Typhus and Virus Institute subordinated to Handloser, and Dr. Demnitz of the Behring Works. The "shell game" is no defense. Guilt was indeed widespread, but that is neither exculpation nor mitigation for these defendants.

Mr. MacHaney will proceed with the closing statement.

MR. MCHANNEY: Another of the rather common defenses urged by the defendants is that the experimental subjects were criminals condemned to death who, provided they survived the experiment, were rewarded by commutation of their sentence to life imprisonment in a concentration camp. For one who has even the slightest knowledge of the conditions in concentration camps and the life expectancy of an average inmate, this alleged defense assumes the aspect of a ghastly joke. We need only recall the remark made by one of the women used by Rascher to reward his frozen victims in Dachau, who when asked by him why she had volunteered for the camp brothel, replied: "rather half a year in a brothel than half a year in a concentration camp". But the defect is this spurious defense runs much deeper. Concentration camps were not ordinary penal institutions, such as are known in other countries, for the commitment of persons convicted of crimes by courts. The very purpose of concentration camps was the oppression and persecution of persons who were considered undesirable by the Nazi regime on racial, political, and religious grounds. Hundreds of thousands of victims were

confined to concentration camps because they were simply Jews, Slavs, or Gypsies, Free Masons, Social Democrats, or Communists. They were not tried for any offense and sentenced by a court, not even a Nazi court. They were imprisoned on the basis of "protective custody orders" issued by the RSHA. Tens of thousands were condemned to death on the single order of Himmler, who, as Gebhardt put it so well, "had the power to execute thousands of people by a stroke of his pen".¹ There were, indeed, a relatively small group of inmates who might be classed as ordinary criminals. These were men who had served out their sentences in an ordinary prison and then were committed to concentration camps

1. Transcript, p. 4025.

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for still further detention. A memorandum of 18 September 1942 by Minister of Justice The rack concerning a conversation with Himmler tells us the fate of those unfortunates:

"The delivery of anti-social elements from the execution of their sentence to the Reichsfuehrer 38 to be worked to death. Persons under protective arrest, Jews, Gypsies, Russians and Ukrainians, Poles with more than 3 year sentences, Czechs and Germans with 8 year sentences, according to the decision of the Reich Minister for Justice".¹

The proof in this case has demonstrated beyond all doubt that so-called criminals sentenced to death were very rarely used in any of the experiments. True it is that Himmler said prisoners condemned to death should be used in those high altitude experiments where the long-continued activity of the heart after death was observed by the experimenters. He was generous enough to say that if such persons could be brought back to life, then they were to be "pardoned" to concentration camp for life. But even this unique amnesty had no application to Russians and Poles, who were used exclusively in those experiments.

But, assuming for the moment, that this alleged defense might have a mitigating effect under some circumstances, it certainly has no application to this case. Be it noted that this is an affirmative defense by way of avoidance or mitigation. There has been no proof whatever that criminals sentenced to death by an ordinary court could possibly be executed in a concentration camp. Such matters were within the jurisdiction of the Ministry of Justice, not Himmler and the SS. The experimental subjects we are dealing with here are those that Himmler could condemn by "a stroke of his pen". If the inmate used in the experiments was condemned for merely being a Jew, Pole, or Russian, or, for example, having had sexual intercourse with a Jew, it does not answer the criminal charge to say that the victim was doomed to die. Experimentation on such a person is to compound

1. 654-PS, Pros. Ex. 562, R. 10695

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the crime of his initial unlawful detention as well as to commit the additional crime of murder or torture. As has been said by another Tribunal, "Exculpation from the charge of criminal homicide can only can only possibly be based upon bona fide proof that the subject had committed murder or any other recognized capital offense; and, not even then, unless the sentencing Tribunal with authority granted by the State in the constitution of the court, declared that the execution would be accomplished by means of a low-pressure chamber".¹

In this connection, it might be noted that German law recognized only three methods of execution, namely, by decapitation, hanging, and shooting. (German Penal Code, Part I, Par. 13; R.G.B.L. 1933, Part I, p. 151; R.G.B.L. 1939, Part I, p. 1457). Moreover, there is no proof that any of the experimental subjects had their death sentences commuted to any lesser degree of punishment. Indeed, in the sulfanilamide crimes it was the experiment plus later execution for at least six of the subjects.

Since the defendants Gebhardt, Fischer, and Oberheuser have put particular stress on this alleged defense, I should like to make a few remarks in that connection, but it should be remembered that they apply with equal force to most of the other defendants. Gebhardt, speaking for his co-defendants Fischer and Oberheuser, took the position that the Polish women who had been used in the sulfanilamide experiments had been condemned to death for participation in a resistance movement and that by undergoing the experiments, voluntarily or otherwise, they were to have their death sentence commuted to some lesser degree of punishment, provided they survived the experiments. This was no bargain reached with the experimental subjects; their wishes were not consulted in the matter. It was, according to Gebhardt, left to the good faith of some one unnamed to see to it

1 U.S. v. Milch, Concurring Opinion of Musmanno, J., p. 53-4.

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that the death sentences were not carried out on the survivors of the experiments. Certainly Gebhardt, Fischer, and Oberheuser assumed no responsibility or even interest in that regard.

It should be pointed out that the proof shows that the experimental subjects who testified before this Tribunal were never so much as afforded a trial; they had no opportunity to defend themselves against whatever crimes they were said to have committed. They were simply arrested and interrogated by the Gestapo in Poland and sent to the concentration camp. They had never so much as been informed that they had been marked for, not sentenced to, death. Article 30 of the Regulations Respecting the Laws and Customs of War on Land, annexed to the Hague Convention, specifically provides that even a spy "shall not be punished without a previous trial".

Gebhardt would have the Tribunal believe that but for the experiments all these Polish girls would be dead; that he preserved the evidence which was used against him. Nothing could be further from the truth. There is no proof in the record that these women would have been executed if they had not undergone the experiments. The witness Magzka is living proof of the contrary. She was arrested for resistance activities on 11 September 1941 and shipped to Ravensbruck on 13 September. She was not an experimental subject yet she lives today. Substantially all of the Polish experimental subjects arrived in Ravensbruck in September 1941. These girls had not been executed by August 1942 when the experiments began. There were 700 Polish girls in that transport. There is no evidence that a substantial number were ever executed even though most of them were not experimented on.

The proof submitted by the Prosecution has shown beyond controversy that these Polish women could not have been legally executed. The right to grant pardons in cases of death sentences was exclusively vested in Hitler by a decree of 1 February 1935. On 2 May 1935.

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On 2 May 1935, Hitler delegated the right to make negative decisions on pardon applications to the Reich Minister of Justice. On 30 January 1940 Hitler delegated to the General Governor for the occupied Polish territories the authority to grant and deny pardons for the occupied Polish territories. By edict dated 8 March 1940, the General Governor of occupied Poland ordered that:

"The execution of a death sentence promulgated by a regular court, a special court, or a Police court martial, shall take place only when my decision has been issued not to make use of my right to pardon."¹

Thus, even though we assume *arguendo*, that the experimental subjects had all committed substantial crimes, that they were all properly tried by a duly constituted court of law, and that they were legally sentenced to death, it is still clear from these decrees that these women could not have been legally executed until such time as the Governor General of occupied Poland had decided in each case not to make use of his pardon right. There has been no proof that the Governor General ever acted with respect to pardoning the Polish women used in the experiments, or, for that matter, any substantial number of those not used in the experiments. The only reason these 700 Polish women were transported from Warsaw and Lublin to Ravensbrück, in the first place, was because the Governor General had not approved their execution. Otherwise they would have been immediately executed in Poland. At the very least, these women were entitled to remain unmolested so long as the Governor General took no action. He may never have acted or, when he did, he may have acted favorably on the pardon. Who is to say that the majority of these 700 women did not live through the war even though they did not undergo the experiments? Certainly it was incumbent on the defense to prove the contrary by a preponderance of the evidence. This it did not do by any evidence.

1 NO-3073, Pros. Ex. 534, R. 10359.

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The defendants Gebhardt, Fischer, and Oberheuser certainly cannot claim that they believed in good faith that the Polish women could have been legally executed. Even the camp doctor, Schiedlausky, knew that the Governor General had to approve each execution. Moreover, the large number of 700 women being sentenced to death at this early stage of the war was enough to put any reasonable person on notice that something was wrong.

Additionally, the uncontroverted evidence proves that survival of the experiments was no guarantee whatever of avoiding execution in any event. At least six of the experimental subjects were proved to have been executed after having survived the experiments. It was not a question of the experiment or execution, but rather the experiment and execution. Indeed, in February 1945, an effort was made to execute all of the experimental subjects, but because of confusion in the camp due to the war situation, the experimental subjects were able to obtain different identification numbers and so avoid detection.

But even if one takes the case of the defense at its face value, the Tribunal is in effect asked to rule that it is legal for military doctors of a nation at war to experiment on political prisoners of an occupied country who are condemned to death, to experiment on them in such a way that they may suffer death, excruciating pain, mutilation, and permanent disability, all this without their consent and in direct aid of the military potential of their enemy. There would, of course, be no valid reason for limiting such a decision to civilian prisoners; the experiments would certainly have been no worse had they been performed on Polish or American prisoners of war. It is impossible to consider seriously this ghoulisn ruling being sought for by the defense.

I should now like to turn briefly to the specific defenses of some of the defendants. It is a temptation to take up each defendant in his turn, but since my appropriate time does not permit, I

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can only hope that we will not be accused of partiality in selecting only a few for comment.

The defense of Handloser is a general denial. He says in effect that: I was a soldier. I was in charge of the medical administration of the Wehrmacht, but had no power and no right to issue orders, and that whatever may have happened, I am not responsible for it. It is interesting to note that this defense is very similar to that put forward by Field Marshal Keitel in this same court room approximately a year ago. He was represented by the same defense counsel. Keitel also said that he could not issue orders. We have already discussed in some detail the position of Handloser, and it has been established beyond a shadow of a doubt that he was the supreme authority in the military medical services. We need not stop to consider the practical difference between

an order and a directive. We have pointed out that the opportunity and power to control the participation of the military medical services in these crimes was his. The evidence shows that Handloser was connected with a number of criminal medical experiments including the typhus and other vaccine experiments both in Buchenwald and Natzweiler, and the freezing, sulfanilamide, jaundice, gas and the gas oedema experiments, among others. But it was his participation in the Buchenwald typhus experiments which now causes Handloser the most distress. The first entry in the Ding Diary proves that Handloser participated in the conference which decided that those experiments should be performed. This has brought forth a concerted attack on the authenticity of this document by Handloser as well as Krugowsky. But after months of torturing and twisting, the diary has not been disproved in a single respect. To the contrary, it has been substantiated time and again by the introduction of independent documents which are too numerous to here detail. There is scarcely a line in the whole diary which has not been corroborated either by documents or by testimony. The defense itself proved that the diary was all typed on the same machine. The genuineness of the signatures of Dr. Ding, which appear on substantially every page, has been proved beyond controversy. The diary must be accepted as accurate in its entirety. There is no basis for accepting some entries and rejecting others. The defense has presented no creditable evidence of any inaccuracies. The living record of the deceased Ding is the best evidence of what actually happened.

But one could disregard the Ding Diary and the proof would still require a judgment of guilty with respect to Handloser. The Buchenwald typhus experiments were also discussed at a preliminary conference on 29 December 1941 attended by a subordinate of Handloser. His office received a copy of the conference report. Medical officers under the direct command of Handloser were informed of the

details of these experiments -- Eyer, Schmidt, and Schreiber. Eyer received a report on the first series of experiments and later, accompanied by Schmidt, visited the experimental station. Typhus infected lice as well as vaccines were furnished to Ding by the Typhus and Virus Institute of the OKH under Handloser. Ding reported on the typhus experiments at a meeting of the Consulting Physicians called by Handloser and presided over by Schreiber. Additionally, the Buchenwald experimental station was used by Handloser to have yellow fever vaccines tested on inmates, the results of which were sent to his hygienist Dr. Schmidt. Combined vaccine experiments were conducted at Buchenwald on the suggestion of Handloser. Old blood plasma was tested on inmates of the "Little Camp" at Buchenwald for the Military Medical Academy under Handloser. The proof is quite clear that Handloser had knowledge of and participated in the criminal typhus experiments in Buchenwald, as well as other medical crimes.

Rudolf Brandt reached the pinnacle in the contest of self-abasement among the defendants. His testimony before the Tribunal can be summed up in one sentence: "I remember nothing." Aside from a description of Himmler as something in the nature of a Jekyll and Hyde, he contented himself with giving answers to leading questions put by his attorney which were calculated to reveal him as a disembodied stenographic automaton or a mechanically proficient half-wit. He complains that the Prosecution only submitted 113 letters written or received by him to establish his complicity in these crimes - which he, indeed, admits. He wants the Tribunal to say he is really not very guilty since he was concerned with over 160,000 letters in a life-time at Himmler's side. Of course, this mechanical measure of proof submitted by the Defense works both ways. It can be urged with equal validity that he is twice the murderer that Sievers has been proved to be on, shall we say, 50 documents. I need hardly mention that a great number of these many other letters mentioned by

Brandt concerned such matters as the kidnapping of Czechoslovakian children, the destruction of the Warsaw Ghetto, extermination of Jews, and the notorious Flier Order, which encouraged the lurching of Allied fliers who bailed out over Germany. The Prosecution does not contend that Rudolf Brandt was as important as Himmler. But he was an important administrative assistant to Himmler. While the basic decisions were made by Himmler, Brandt saw to it that they were carried out. If the principle of relative guilt has any place in the trial of men directly connected with the murder of thousands of persons, which the Prosecution submits it has not, then the significance of Brandt's position and his criminal activities comes into clear relief by comparison with that of the camp commander of Dachau and many of his subordinates, who have long since been sentenced to death for their participation in some of the same crimes charged in this Indictment.

Rudolf Brandt also pleads superior orders in mitigation. There is no evidence that Himmler ordered Brandt to participate in any crime. Brandt did so wilfully. There is no evidence that Brandt retained his position out of fear. He flourished in it. Nothing would have been easier for him than to be replaced out of request or feigned inefficiency. Brandt was not a soldier on the field of battle. His activities were far removed from the confusion of the front lines. He did not act in the spontaneous heat of passion; he had full time to consider and reflect upon his course of action. He continued in his position from 1933 until his arrest by the Allies in 1945, no less than 12 years. This fact alone removes any basis for mitigation. Moreover, assuming that Brandt was ordered to commit the criminal acts which are the subject of this trial, when there is no fear of reprisal for disobedience, obedience represents a voluntary participation in the crime. Such is the case with Rudolf Brandt. Finally the doctrine of superior orders can not be considered in mitigation where such

malignant and numerous crimes have been continuously and ruthlessly committed over a period of many years.

What has been said with respect to Brandt applies equally to the defendant Fischer who also pleads superior orders. He knew at the time he performed these experiments that he was committing a crime. He knew the pain, disfigurement, disability, and risk of death to which his experimental victims would be subjected. He could have refused to participate in the experiments without any fear of consequences. This he admitted in saying, "It was not fear of a death sentence or anything like that, but the alternative was to either be obedient or disobedient during war, and thereby set an example, an example of disobedience." ^{1/} Such an admission removes any basis for mitigation. A soldier is always faced with the alternative of obeying or disobeying an order. If he knows the order is criminal, it is surely a hollow excuse to say it must be obeyed for the sake of obedience alone.

The defendant Beiglbosck attempts to run in all directions at once. The gypsies which he used in his experiments he tells us were volunteers, although he carried a pistol on his hip; they took the seawater willingly, although he found it necessary to tie one to his bed and seal his mouth with adhesive plaster to prevent him from obtaining fresh water; none of the experimental subjects suffered any harmful effects, although he contemptuously erased and altered the wording of a clinical record of one of the subjects in a vain effort to conceal from the Tribunal his desperate condition. This reluctant admission of fraud and deceit on his part came only after the proof left him no alternative, but he solemnly assured the Tribunal that he made no further changes in the documents. A further examination, however, shows that he did exactly the same thing with

^{1/} Transcript, p. 4374

respect to another report of a subject's condition. But Beiglboeck's primary defense seems to be based on the proposition that it is not a crime against humanity to experiment on gypsies, since they are, at least according to Nazi doctrines, necessarily "asocial" persons. Beiglboeck apparently considers himself something of an expert on this subject. He testified that it was his understanding that a whole family could be classified asocial, although this does not exclude the possibility that, in this family, there can be a large number of persons who did not commit any crime". 1/ This notion that all gypsies are asocials is also apparently shared by his defense counsel who when cross-examining the witness Hoellenreiner said, "Listen, Dr. Hoellenreiner, don't evade my question after the fashion of gypsies". 2/ It was also felt necessary to submit an extract from a work known as the "Gypsy Book", which reads in part as follows:

"The 'gypsy plague' from which we suffer is caused by large numbers of gypsy bands and individual gypsies roaming about the country between the Austrian, Swiss and French borders under the cloak of trading..... thereby seriously endangering public security by their vagrancy. Besides begging, trespassing on fields, forest land and meadows, spreading the risk of epidemics and fires, trickery, these people are inclined to thievery."

While this book was published in 1905, it could not have been better written by Julius Streicher. Such Nazi doctrines of inferior races and peoples simply serve to explain how these crimes of man's inhumanity to man could have occurred.

In Siever's we have an unresisting member of a so-called resistance movement. He asks the Tribunal to free him from guilt for his bloody crimes on the ground that he was really working as an anti-Nazi resistance agent. Nor was he a late-comer to the resistance movement; according to him, he has been resisting since

1/ Transcript p. 8848.
2/ Transcript p. 10508.

1933. Yet in those 14 years, yes to this very day, he has not performed one overt act against the men who ran the system he now professes to have always detested. He joined the Nazi party as early as 1929 and the SS in 1935. He stayed with Himmler's gang until the last days of the collapse. He came to Nurnberg in 1946, not to give evidence of the horrible crimes of which he had first-hand knowledge, but to testify in defense of the SS. During his testimony before the International Military Tribunal, he consistently denied any knowledge of or connection with crimes committed by the *Ahnenerbe* or the SS. It was left to the cross-examination of Mr. Elwyn Jones to prove him the murderer and perjurer that he is. Nor did he show any signs of resistance in this trial except to the manifold crimes with which he is charged. Not one new fact did he reveal to this Tribunal, although specifically asked to tell all he knew. If asked today, he will assure one and all that there is not a guilty man in the dock, and least of all himself. But, for purposes of argument, let us concede the truth of his many lies. It does not harm our case. It is not the law that a resistance worker can commit no crime and,

least of all, against the people he is supposed to be protecting. It is not the law that an undercover agent, even an F.B.I. agent, can join a gang of murderers, lay the plans with them, execute the killings, share the loot, and go his merry way. Many are the policemen who have been convicted for taking part in crimes they were entrusted to prevent. No, the said thing is that this collector of living Jews for transformation into skeletons has only one life with which to pay for his many crimes.

In view of the clear and unequivocal proof of the defendant Rosa's participation in the typhus murders of Buchenwald he can only plead that he didn't enjoy doing what he did, that he objected to the experiments at the Third Meeting of the Consulting Physicians of the Wehrmacht in May 1943. But this is his condemnation, not his salvation. In March 1942 he was in Buchenwald and saw what was being done. In May of the same year he asked Hrugowsky to test a vaccine for him in those experiments. Four inmates were killed as a result. In May 1943, he objected to the experiments in what he describes as strong terms. But in December, he was again instigating still another experiment which resulted in the murder of six men. He is a living example of a man who could have abstained from participating in these crimes without threat of harm to his person or position by any agency of the Nazi Government. He was not arrested and tried by the SS because of his objection. He was not committed to a concentration camp. In spite of that, he voluntarily participated in these same crimes to which he said he objected. With his knowledge, prestige, and position, he is even more culpable than the miserable and inexperienced Ding who actually performed the experiments in the murder wards of Buchenwald.

CONCLUSION

I have already mentioned briefly the principle of relative guilt, but before concluding I should like to say a few more words in that connection. Over the past half-year or more, we have all because acquainted with ghastly evidence of mass murders both from the record of

this proceeding and the trials which have preceded it. It would not be surprising, therefore, that we might tend to regard a man who killed only three or five persons as a pretty nice fellow by comparison. For example, it might be said that Gebhardt, who admitted that three women died in his sulfamidamide experiments, is entitled to a somewhat different punishment than Earl Brandt, who conceded that 60,000 persons were executed under his euthanasia program. In response to a question put by a defense counsel, Dr. Ivy emphatically stated that "there is no justification in killing five people in order to save the lives of 1 300". The idea that such thinking may be justified, with its inherent usurpation of the Lord's prerogative, is typical of Nazi thought. This whole system of Nazi mathematics is untenable in civilized society. This corruption of thought is found even in a mathematics problem book, published in 1935, for use by German school children. Under the guise of mathematics, the revulsion of normal children against the spreading of death by poison gas is incidiously broken down. Let us look at Problem 200 in this text book on mathematics and see what it says:

"According to statements of the Draeger Works in Luebeck, in the gassing of a city only 50% of the evaporated poison gas is effective. The atmosphere must be poisoned up to a height of 20 meters in a concentration of 45 mg/m³. How much phosgene is needed to poison a city of 50,000 inhabitants, who live in an area of 4 square kilometers? How much phosgene would the population inhale with the air they breathe in 10 minutes without protection against gas, if one person uses 30 litres of breathing air per minute? Compare this quantity with the quantity of the poison gas used."²

The same perversion of thinking in terms of Nazi mathematics also explains the mass extermination of what several defendants have called "lives unworthy of living", the aged, the crippled, and the insane. Any German high school student who had studied this book on mathematics could have told us that. Problems 95 and 97 tell the story more eloquently than we could possibly state it.

1. Transcript, 9229.

2. Mathematics in the Service of National Political Education With Practical Examples from Economics, Geography and Natural History, Adolf Dornier, 1935.

"Problem 95. The construction of an insane asylum required 6 million R.M. How many settlement houses at 15000 R.M. each could have been built for this sum?

"Problem 97. An insane person costs about 4 R.M. daily, a cripple $5\frac{1}{2}$ R.M., a criminal $3\frac{1}{2}$ R.M. In many cases a civil servant only has about 4 R.M., an office employee barely $3\frac{1}{2}$ R.M., an unskilled laborer not even 2 R.M. per head of his family.
(a) Illustrate these figures graphically. According to cautious estimates there are in Germany 300,000 insane persons, epileptics, etc. under institutional care.

(b) What is their total annual cost at a figure of 4 R.M.?

(c) How many marriage allowance loans at 1000 R.M. each - subject to renunciation of repayment of the money later - could be paid out from this money yearly?"

This Tribunal must solemnly reaffirm an entirely different type of mathematics; mathematics in the light of religious and humane education which teaches that the value of even one human life is infinite, which means, again mathematically expressed, that one times infinity is just as infinite as 500 times infinity.

A distinguished American scientist said in this court room:

"There is no state or politician under the sun who could force me to perform a medical experiment which I thought was morally unjustified".¹

This was more than the viewpoint of an individual or of an American. Dr. Ivy expressed the opinion of all medical men and decent people of the civilized world. These defendants held a very different view in their day of pomp and power, and so these crimes resulted.

A prominent present day German leader has expressed the opinion that we are partly responsible for the snow-balling consequences of rearmament in violation of treaties in 1936, because we did not then strongly enough express our disapproval. There is some logic in this statement, although it illuminates the tragic failure of being too dependant on guidance from outside rather than on the dictates of one's own conscience. Therefore, let there be no doubt about the degrees of

1. Transcript, p. 9229.

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your condemnation of the acts of these defendants.

THE PRESIDENT: Before the arguments on behalf of defense counsel the Tribunal will take a short recess.

THE MARSHAL: Persons in the court will be seated.

The Tribunal is again in session.

THE PRESIDENT: The Tribunal will now proceed to hear the arguments of defense counsel. Counsel for Karl Brandt may open the argument.

BY DR. SERVATIUS (Defense Counsel for defendant Karl Brandt):

Mr. President, Your Honors:

I cannot comment on all the questions which the prosecution brought up this morning. I must limit myself to a few things and can refer to my closing brief where I have believed to have gone into considerable detail on all these questions.

This morning I heard the detailed legal arguments advanced by the prosecutor. I have commented particularly on these legal questions in my closing brief, and I want to make merely a brief comment now.

The prosecution assumes that Law No. 10 is an independent law. This is not correct, for it designates itself explicitly as a law for the execution of the London Charter and declares that Charter to be an integral part of the law.

Now, the sole purpose of the London Charter is to punish the disturbances of international legal relations and not what has happened or is happening somewhere within an individual state. Any other conception would be the end of the idea of sovereignty, and it would give a right of intervention into the affairs of another state.

In the trial before Tribunal III, Case No. 3 against Flick et al, General Taylor referred to an alleged right of intervention, quoting a considerable amount of literature in regard to this right of intervention into the internal affairs of another country.

I ventured to put in evidence the position taken by one of the four signatory Powers of the London Charter, a signatory power which was itself the victim of intervention in the name of civilization: the Soviet Union.

I have drawn the attention of the Tribunal to the position of the Soviet Union in my closing brief in the attachment to Part I.

The Soviet Union drew its clear conclusions from the intervention to which it had been exposed by the Entente at the end of the first World War, and obtained a clarification of the text of the London Charter, under which intervention would have been possible, by insisting that the text, which was ambiguous in consequence of the punctuation, be altered by the insertion of a comma. This comma was so important that the representatives of the four signatory Powers met on purpose to discuss it.

It results therefrom that the affairs in the interior of a country cannot be affected by the London Charter and, consequently, by Law No. 10. Punishment by this Tribunal of acts committed by Germans against Germans is therefore illegal.

The Prosecution further discussed this morning at length another question, that is the question of conspiracy. In respect to this I also have taken the position in my closing brief.

The point of view of the defense that a charge for conspiracy as an independent offense is inadmissible was confirmed by the Tribunal's decision of today. In that way the hole in the dike, so to speak, was stopped, and one cannot let the ocean pour into the land from the other side by declaring the conception of conspiracy admissible under common law. The conception of conspiracy is really only a technical expedient of the jurists. Its purpose is to effect beyond the number of accomplices in the true sense of the word other persons whom one considers to deserve punishment, but who cannot be convicted of complicity.

This may be done where the law against conspiracy is common law, but if this law is to be introduced in Germany after the event and applied to facts which have occurred in the past this would mean that by the detour of the law of procedure new conceptions of offense would be introduced into material law. This is equal to ex post facto law and is therefore an illegal attempt pursuant to the legal principles generally recognized.

The purpose of enlarging the circle of participants cannot be obtained under Law No. 10 by a dissolution of the conception of the conspiracy into its components, and the introduction of forms of complicity unknown till now in Germany.

Now, I shall read my statement proper. In the closing statement against the defendant Karl Brandt the Prosecution discussed very little the counter-evidence brought forward by the defense in the course of the proceedings. They relied to a large extent on evidence already advanced in the indictment.

The affidavits of the defendants themselves play a special role in support of the prosecution. For the defendant Karl Brandt they are important in respect of his position, and the resulting knowledge of the events referred to in the indictment.

As far as these affidavits contain charges they can be used, according to the Tribunal's statement, only against the affiants themselves. Insofar as they charge the defendant Karl Brandt, however, they have been clarified in respect to the decisive issues. But in spite of this correction the first statements may reduce the credibility unless good reasons justify such correction.

Here the result of interrogations made in the initial proceedings is in contradiction to the evidence given before the Tribunal. On the basis of practical experience, German law considers only the result of an interrogation made by a judge valid evidence. The reason is the lack of impartiality to be found, quite naturally with an interrogating official who is to conduct the Prosecution. The capacity of the interrogator to elicit the truth impartially depends on his character, his training, and his professional experience.

The qualification of the interrogators has been attacked here by the Defense, but the Prosecution has made no effort to substantiate it.

To form a judgment it further is important to know on which general line the prosecution carries out its interrogations. Under German law the Prosecutor is also to ascertain and put forward exculpatory material when investigating a case personally or through assistants. For American Procedure, Justice Jackson clearly rejected this principle during the trial before the International Military Tribunal, and said he could never serve two masters.

This critical view of the affidavits is confirmed by their contents, which frequently show the struggle between the interrogator and the interrogated person. He is no classical witness who says, "I believe," "I presume", "as far as I remember," etc., for he shows thereby that he can give no positive information. And such testimony becomes completely worthless, if conclusions are drawn in the form of, "It would have been impossible for him," "he could have known," "perhaps he was the highest authority", etc.

Not only individual words thus demonstrated that the testimony is

composed of conclusions, but whole parts of the reports show the same character.

Considering all this the defendants' contentions are to be believed that they raised objections, but succumbed to the weight of the prepared record presented to them and signed, trusting that they should have an opportunity later to clarify deficiencies and state their true opinion.

This criticism of the defendants' affidavits is also required in respect of the affidavits given by the witnesses for the Prosecution in which facts are recorded which the witnesses do not know themselves, but of which they only heard and which they presume, after having been made to believe them by persuasion. The individual cases in which objections are to be raised in this line have been dealt with in the closing brief.

The charges advanced against the defendant Karl Brandt include the spheres of medical experiments on human beings and Euthanasia.

In both cases the defendant is charged with having committed crimes against humanity.

The press comments on the proceedings, anticipating the sentence by publishing articles about abject characters and wickedness. Pamphlets with strong headings appear.

On the other hand the Tribunal will make itself acquainted with the literature collected by the Defense as evidence. If one reads this literature one loses one's self-confidence and one cannot finish without confessing that here there are problems which before the defendants, persons not considered criminals have tried to resolve. These are problems of the community. The individual may make suggestions for their solution, but the decision is the task of the community and therefore of the State. It is the question, how great a sacrifice the State may demand in the interest of the community. This decision is up to the State alone.

How the State decides depends on its free discretion, and finds

its limit only in the revolution of its citizens. In obeying the orders of his State, the defendant Karl Brandt did no wrong. If sentence is passed against him, it would be a political sentence against the State, and the ideology it represents.

One can condemn the defendant Karl Brandt only by imposing on him the duty of revolution, and the duty of having a different ideology from his environment.

It is contended that the State finds its limits in the eternal basic elements of Law, which are said to be so clear that anyone could discern their violation as a crime, and that therefore loyalty to the State beyond these limits is a crime. One forgets that eternal law, the Law of nature, is but a guiding principle for the State and the Legislator, but not a counter-code of law which the subject might stand on against the State. It is emphasized that no other State had made such decisions up till now. This is true only to a certain extent. It is no proof, however, that such decisions were not necessary and admissible now. There is no prohibition against daring to progress.

The progress of medical science took up the problem of the experiments on human beings already in the past century, and eventually made it ripe for decision. It is not the first time that a State takes up a position with regard to euthanasia with a change of ideology.

What is to be done in the interest of the community only the Statesmen decide, and they have never hesitated to issue such a decision whenever they deemed it necessary in the interest of their people. Thereupon their rules and orders were carried through under the authority of the State, which is the basis of society.

Inquisition, witch-trials, and revolutionary tribunals have existed in the name of the State, and eternal justice, and the acting persons did not consider themselves criminals but servants of their community. They would have been killed if they had stood up against what was believed to be the newly discovered eternal justice. What is the subject to do if the orders of the State go beyond the customary limits which

the individual himself took for inviolable according to traditions.

What did the airman think who dropped the first atomic bomb on Hiroshima? Did he consider himself a criminal? What did the Statesman think who ordered this atomic bomb to be used?

We know from the history of this event that the motive was patriotism, based on the hard necessity of sacrificing hundreds of thousands to save their own soldiers' lives. This motive was stronger than the prohibition of the Hague Convention, under which belligerents have no unlimited right in the choice of means to inflict damage on the enemy.

"My cause is just and my quarrel honorable," says the king. And Shakespear's soldier answers him: "That's more than we know." Another soldier adds: "Ay, or more than we should seek after; for we know enough if we know we are the king's subjects; if his cause be wrong, our obedience to the king wipes the crime out of us."

It is the hard necessity of the State on which the defense for Karl Brandt is based, against the charge of having carried out criminal experiments on human beings.

Here also - in addition to the care for the population - the life of soldiers was at stake who must be protected from death and epidemics. In the experiments Prof. Bickunbach's, the issue was the lives of women and children who without 45 million gas masks would have been unprotected against the expected gas attack, as the Japanese were against the atomic bomb. Biological warfare was imminent, even praised abroad, as cheaper and more effective than the atomic bomb.

Is it really against the law and all political morals if the state provides there for such emergency and orders the necessary medical experiments to be performed on its own citizens? As applied to foreigners such procedure is limited on principle; in my closing brief I have discussed the exceptions.

What is to be done is decided not by the physician but by the political leader. Even the expert Dr. Ivy had to grant him the funda-

mental authority.

The question remains why, with the legal position so clear, a man like Keitel refused to have such experiments carried out in the Wehrmacht and why the defendants themselves in part try to disprove any connection with the experiments. The answer is, a measure may be as unavoidable as war and still be abhorred in the same way.

Unlike Professor Ivy, these men certainly consider these experiments an evil, and their personal desire is not to have to participate in them if possible, and not to engage in them troop units who were not to be burdened with such questions, and had no insight into the necessity of the measures to be taken. In spite of everything Germany was not yet so "communized" that all private feeling of the individual had disappeared.

The Prosecution opposes to this necessity the condition of absolute voluntariness.

It was a surprise to hear from the expert Professor Ivy that in penitentiaries many hundreds of volunteers were dying for admission to experiments and that more volunteered than could be used. I do not want to do away with this phenomenon with irony and sarcasm. There may be people who realize that the community has the right to ask them for a sacrifice. Their feeling of justice may tell them that insistence on humanity has its limits. If humanity means the appeal to the strong not to forget the weak in the abundance of might and wealth, the weak should also make their contribution when all are in need.

But what if in the emergency of war the convicts and those declared to be unworthy to serve in the Armed Forces refuse to accept such a sacrifice voluntarily, and only prove an asocial burden to State and community and make the community break down; isn't compulsion by the State then allowed as an additional expiation?

The Prosecution says no. Then human rights require the downfall of human beings.

But there is a middle way between voluntariness and compulsory ex-

piation: "purchased voluntariness." Here the experimental subject does not make a sacrifice out of conviction for the good of the community, but for his own good. The subject gives his consent because he is to receive money, cigarettes, a mitigation of punishment, etc. There may be isolated cases of this nature where the person is really a volunteer, but as a rule it will be different.

If one compares the actual risk with the advantage granted, one cannot admit the consent of these "voluntary prisoners" as legal, in spite of all protective forms they have to sign, for these can have been obtained only by taking advantage of inexperience, imprudence, or distress.

Looking through medical literature, one cannot escape the growing conviction that the word "volunteer" where it appears at all, is used only as a word of protection and camouflage; it is hardly lacking since the struggle about this problem has become urgent.

I will touch only in brief on what I have explained in detail in my closing brief. No one will contend that human beings really let themselves be infected voluntarily with venereal disease; this has nowhere been stated explicitly in literature. Cholera and plague are also no minor inconveniences one is likely to undergo voluntarily for a trifle in the crest of science; above all, it is not customary to give up children for experimental purposes, and I cannot believe that in the 13 experiments carried out on a total of 223 children in Dock 117, the mothers gave their consent. Wouldn't the mothers have deserved the praise of the scientist for the sacrifice they trustfully brought in the interest of science, a praise which is otherwise liberally granted to real volunteers in reports on experiments.

Is it not likely to have been similar to the experiments carried out by Professor McCance, Doc. 93? The German authorities who condemn the defendants in a particularly violent form have no objection to raise against the order to hand over weeping children for experimental purposes to a Research Commission. The questionnaires which the Tribunal

approved for me in order to get further information about this matter have not been answers, as superior authorities did not give the permission to make such statements. This silence says enough; it is proof of what is supposed to be legal today in the line of voluntariness.

It is shown again and again that the experiments for which no consent was given were admitted with the full knowledge of the government authorities. It is shown further that these experiments were published in professional literature without meeting any objection, and that they were even accepted by the public without concern as a normal phenomenon when reports about them appear in popular magazines.

This happens at a time when the same press is stigmatizing as crimes against humanity the German experiments which were necessary in the interests of the State. Voluntariness is a fiction, the emergency of the State hard reality.

In all countries experiments on human beings have been performed by doctors, certainly not because they took pleasure in killing or tormenting, but only at the instigation and under the protection of their state and borne by their own conviction of the necessity in the struggle for the existence of the people.

The German doctor who acted in conformity with the German regulations can be punished no more than the American doctor who complied with the requests of his state in the way which is customary there.

Justice is indivisible.

To what extent is the defendant Karl Brandt implicated in the medical experiments?

The Prosecution says in almost all, and refers to his position and his connections. They state that he was the highest Reich authority in the medical sphere; there, however, they are misled by an error of the translator, for Karl Brandt only had the powers, regulated in a general way, of an "Oberste Reichsbehörde" (Supreme Reich authority), but the execution of these powers was restricted to special cases.

This appears from the three known degrees and from the explanation

thereof given by the witnesses. Moreover Karl Brandt was not given these functions until 1944, when these experiments were practically finished, as is shown by the time schedule submitted to the Tribunal for comparison.

It has been proved that the defendant Karl Brandt himself in a broadcast publicly called his position as Reich Commissioner a "Differential." In fact, Karl Brandt's task was not to order but to adjust; it was a task designed to fit his character.

We have also learned from the presentation of evidence that the defendant Karl Brandt did not have the machinery at his disposal for issuing orders which was necessary for a highest Reich authority; he lacked the staff and the means. No one who is acquainted with a government administration will think it possible under these circumstances that the defendant Karl Brandt might have been able to enforce his point of view against the resistance of the old agencies; no one will even think it probable that anything would have been done to facilitate such an attempt of the "new master."

Consequently, Karl Brandt's position was not such as to justify the conclusion drawn by the Prosecution about his general knowledge. There was no official channel by which everything had to come to his knowledge, for he was not the superior of other authorities.

It is true that the defendant Karl Brandt was supposed to be informed about fundamental matters, that he had the right to intervene, etc. But these were only possibilities, not in conformity with conditions in practice. We have seen that Conti opposed him and that Himmler prohibited direct contact with Karl Brandt within his sphere.

Therefore, Karl Brandt can be brought into connection only with the events in which he participated directly.

Here it is striking first of all that the defendant Karl Brandt, who is supposed to have been the highest authority, appears only very rarely.

There are three so-called troop experiments, the testing of drinking water, concentrated food, and an ointment for burns.

Further, three medical experiments relate to the defendant Karl Brandt: The Hepatitis experiment, which he is said to have suggested, was not carried out. While that research was continued during the following years, Karl Brandt who is said to have sponsored it particularly, is mentioned by none of the numerous witnesses and experts, and his name is not mentioned in any document. Is, therefore, the explanation not plausible that Grawitz confused the names?

The second case is the request to hand over 10 prisoners for two days for an experiment which is not named. This cannot refer to a true medical experiment, for such experiment cannot be carried out in such a short time with the necessary tests and observations. The speedy return of the experimental subjects indicates that the experiment was not dangerous.

Finally, the defendant Karl Brandt is connected with the phosgene experiments of Bickenbach, which caused the death of four Germans sentenced to death. But precisely here Bickenbach's affidavit shows that the defendant Karl Brandt was outside of the whole framework of the experiment in Himmler's sphere and that he was merely approached for mediation. The order came from Himmler. The experiments had to seem innocuous to the defendant Karl Brandt since Bickenbach wanted to carry them out on himself.

On the other hand, there was the emergency of the State and the enormous importance of the discovery that the taking of a few Urotropine tablets was to give the ardently desired protection for all against the expected gas attack and, as the result of the experiment shows, actually did so.

Now the prosecution endeavors to establish a connection of Karl Brandt with the other experiments via the Reich Research Council. It is true that one can establish such a connection theoretically on paper, but the links of the chain break when one examines them closely. Only the head of the specialized department (Fachspartenleiter) judged the

so-called research assignments and he only investigated whether the aim was necessary for war, not how the experiment was to be carried out. He could not inform others of matters which he did not get to know himself.

The defendant Karl Brandt is charged further with not having protested in one case when he heard about deaths caused by experiments on persons sentenced to capital punishment in the well-known lecture on sulfonamide. I must point out that even if this experiment had been inadmissible, silence would not be a crime for assent after the act is without importance in criminal law and one can be connected with plans and enterprises only as long as they have not come to an end.

Now the prosecution has introduced in its closing brief the new charge of holding the defendant Karl Brandt responsible for negligence. In this respect I should like to point out that no indictment for negligence has been brought in and that the concept of crime against humanity committed by negligence cannot exist.

It, therefore, will be sufficient to emphasize that the pretended negligence depends on the existence of an obligation of supervision and the right to give orders through other agencies. In every State the spheres of competence are separated and it is not possible for everyone to interfere in everything because everyone is responsible for everything.

The prosecution says that the defendant Karl Brandt ought to have used his influence and have availed himself of his intimate relations to Hitler to stop the experiments. Even presuming that he was aware of the facts as crimes, his guilt would not be of a legal but only of a political or moral nature.

Till now nobody has been held criminally responsible for the conduct of a superior or a friend; the question of criminal law, however, is the only one the Tribunal has to consider.

But in fact these close relations did not exist; the defendant Karl Brandt was the surgeon who had to be in attendance on Hitler, Dr.

Morell, the latter's personal physician, soon tried to undermine the confidence placed in Karl Brandt so that he was charged with commissions which removed him further and further from the sphere of his medical activity.

The alleged intimate relations were eventually crowned by the dictation of a death sentence against Karl Brandt without his having been granted even a consultation on the charges advanced against him.

If one sums up all that relates to the medical experiments and follows to a large extent the charges of the Prosecution, it is an established fact that it is not shown that the defendant Karl Brandt participated in any way in experiments on prisoners of war and foreigners of that he was cognizant of them. Therefore, no war crime or crime against humanity has been committed, and consequently punishment under law No. 10 is excluded. I offer in this respect to the legal arguments in my closing brief.

The second problem is Euthanasia.

The authorization of 1 September 1939 was issued before the time of the medical experiments at a time when the defendant Karl Brandt was still closely attached to the Fuehrer's headquarters and to Hitler as an accompanying physician.

In my closing brief I have explained in detail that the defendant Karl Brandt did not participate in the Action 14 f 13 with the "special treatment" of prisoners in concentration camps, occurrences which were given the name of Euthanasia only here in the trial.

Neither did the defendant Karl Brandt take any part in the extermination of Jews in Auschwitz, which again has nothing in common with the idea of Euthanasia.

I have shown further that the so-called "wild Euthanasia" which was carried through simultaneously with and immediately after legal Euthanasia is not due to Karl Brandt. The stopping of Euthanasia in August 1941 has been proved and therefore the end of the defendant Karl

Brandt's duties; for what would have been the meaning of this cessation if after it an increased activity was to set in.

The contacts of Karl Brandt after the stop have been clarified as the consequence of his activity in evacuation for air protection. Where the name of the defendant Karl Brandt is mentioned otherwise it obviously serves only as means of advertisement with uninformed people, who never saw or heard anything of him themselves.

I shall deal here with Euthanasia only insofar as it is officially provided under the Ordinance of 1 September 1939. In respect to the "Reich committee" I refer to my closing brief.

By the presentation of evidence it has been established that the defendant Karl Brandt actually had no "administrative and medical office," from where the whole organization might have been administered. On the contrary, it is a fact that Bouhler declared himself alone responsible for the procedure; this is testified to by documents which leave no doubt.

Nor has any regulation or instruction become known which was issued by Karl Brandt. Not a single document was signed by him. He made no speeches and conducted no discussions.

But what did he do and what was his duty?

His duty was not to carry out Euthanasia but he was only to be informed in special cases in order to be able to report to Hitler. This was in conformity with the practical conditions, the sojourn and the simultaneous attachment to the Fuhrer's headquarters and to Hitler.

Only once was Karl Brandt seen active, and that is in the negotiations with Pastor von Bodelschwingh, which led to the result, amazing for us, that the defendant Karl Brandt von Bodelschwingh's sympathy and that after the collapse in a radio interview the latter said that he was an idealist but not a criminal.

But the defendant Karl Brandt took note of the interrogatory forms, he inspected a registrar's office, and he co-signed the authority for physicians to execute Euthanasia.

What could the defendant Karl Brandt learn from the forms?

The Prosecution thinks that Jews and foreigners were to be affected in the first instance. By the affidavit of the director of the Jewish lunatic asylum in which all insane Jews of Germany were concentrated, it is proved that this was not done.

The prosecution says that all persons unfit for work were to be killed as useless eaters. But it is ascertained that even workhouses were requested to give information only about cases of really grave insanity.

What did the defendant Karl Brandt know about the procedure?

He knew that the authorization which was issued was not an order given to the doctor, but only conferred on him the right to act under his own responsibility with the most critical consideration of the patient's condition; this was a clause inserted in the ordinance of 1 September 1939 on Karl Brandt's initiative.

The defendant Karl Brandt knew that the specialists whom he did not know were chosen by the Ministry of the Interior and that the experts were eminent men in their specialty.

The defendant Karl Brandt also knew that the authorities concerned saw no reason to object to the execution of the measure and that even the chief jurists of the Reich declared the legal foundations to be irreproachable, after having been informed of the facts.

Within this framework the defendant Karl Brandt approved of official Euthanasia and supported it.

But the prosecution calls even the Euthanasia thousand fold murder. In their opinion there is no formal Law, and it is alleged that the expert Dr. Lammers confirmed this.

Yes, but he also stated that even an informal ordinance was valid. Even an order issued by the Fuhrer had the force of law, as the unambiguous effects of such orders make perfectly clear, in particular to a foreigner.

But for the defendant Karl Brandt it is of no importance whether the Ordinance of 1 September 1939 was actually valid; the only important thing was that he had reason to believe it was valid and that he could rely on this opinion.

German Courts have already dealt with cases of execution of Euthanasia; but these cases occurred after the official procedure had been stopped, like Hadamar, or persons had been killed who could never have come under the powers conferred in the ordinance, or other crimes were committed.

It is to be observed that these sentences always emphasize the base motives of the offenders. On the other hand, these courts were concerned with the question in respect of public law only insofar as they state that no formal law was submitted. In one case the court restricted itself to information given by a member of the Prosecution staff in the trial before the International Military Tribunal.

The real objections to Euthanasia are not based on a formal point of view but rather on the same reasons which are advanced against the admissibility of the medical experiments.

Even an insane person of the lowest degree may not be killed, it

is said. No human being may presume to kill another human being.

But the right to kill in war is accepted in international law, and public law allows the suppression of a revolt by violence.

What prevents the State from ordering killing as well in the sphere of euthanasia?

The answer is that there is no motive which might justify an action of this kind.

The economic motive of eliminating "useless eaters" is certainly not sufficient for such measures. Such a motive was never upheld by the defendant Karl Brandt; it was apparently mentioned by others as an accompanying phenomenon and later taken up by the counter-propaganda.

The move of pity with the patient was considered by the defendant Karl Brandt as decisive. This motive is tacitly accepted for euthanasia on the deathbed, and doctors in all countries increasingly profess to it.

In former times the courts were concerned repeatedly with homicides committed out of pity, and in sensational trials juries found offenders not guilty who freed their nearest relatives from the torment of life.

Who would not have the desire while in good health to die rather than to be forced by all the resources of medical science to continue life degraded to a beast's existence! Only misunderstood civilization keeps such beings alive; in the normal struggle for existence Nature is more charitable.

But the legislator has hitherto refrained from giving the authority to kill in such cases. But he may resolve the problem if he wants to. The reasons for his restraint are exactly those which led here to disguise these measures and to keep them secret. It is the fear of foul machinations in the sphere of inheritance, the psychic burden laid on the relatives, etc. The individual does not want to bear this burden, nor is he able to do so. It can be taken over only by the State, which is independent of the desires of those concerned.

That such is the will of the rependerant majority of those who really get into touch with these problems was shown by the result of the inquiry conducted by Professor Meltzer, which has been offered as evidence. It was carried out by him many years ago to get an argument against Euthanasia and its principal supporters, Binding and Hoche. He got the reverse of what he had expected himself as an expert.

But I see a third motive which unconsciously plays an important part; it is the idea of sacrifice.

A lunatic may cause the psychic and economic decay of a family and also ruin it morally.

When mad human beings bring great sacrifices for the community and immolate their lives by order of the State, the insane, if he had the capacity of a mental resurrection and of decision, would choose a similar sacrifice for himself.

Why should not the State be allowed to exact this sacrifice from him and impose on him what he would want to do himself?

Shall the State be forbidden to carry out Euthanasia until the whole world is a hospital, while the creatures in nature keep stainless thanks to what is believed to be the brutality of Nature?

The decision whether such an order given by the State is admissible depends on the conception of the life of mankind in society and is therefore a political decision.

Neither the defendant Karl Brandt nor anyone else who participated in legalized Euthanasia would ever have killed a human being on their own authority, and in German sentences the blameless former life of the persons stigmatized as mass-murders is always emphasized.

This is a warning to be cautious. Did they really commit brutalities, or were they sentenced only because they were not in a position to swim against the tide of the time and to oppose to it their own judgment?

A Christian believing in dogma will turn away in pity from this way of thinking. But if the order to use Euthanasia to the foreseen limited extent was really in such contradiction to the commandment

of God that anyone could see this, it is comprehensible why Hitler, who never withdrew from the Church, was not excommunicated.

This must remove the burden of guilt which one now wants to pile up. Then humanity would have perceived clearly: in this devilish struggle no man can hold his own, for God stands for Justice.

If there are offenders there are many co-offenders, and one understands the saying of Pastor Neimoller: "We are all guilty."

This is a moral or a political guilt, but the burden cannot be conveyed to a single person as criminal.

Surely I have shown the fundamental lines according to which the actions of the defendant Karl Brandt have to be judged.

For the legal judgment by this Tribunal the primary consideration is that no prisoners of war or foreigners were submitted to Euthanasia with the knowledge or the will of the defendant Karl Brandt.

Thus the defendant Karl Brandt cannot be punished under Law No. 1 on this count either; what happened between Germans is not subject to the decision of this Tribunal.

Finally, the defendant Karl Brandt is also charged with having belonged to the organization of the SS which has been declared criminal.

Evidence that the defendant Karl Brandt knew of a criminal aim of this organization and approved of it must be brought by the Prosecution.

A reference to the general assertions in these proceedings is not sufficient to bring this proof, for precisely here the prosecution cannot prevail with their assertions in regard to Karl Brandt.

As to the details, I refer to the statements made in my closing brief.

The fact that the defendant Karl Brandt was the only member of the SS who at the same time retained his position as a Medical Officer of the Army shows that his honorary rank in the SS was really only formality and that he was no true member of this organization.

When the defendant Karl Brandt gave evidence here as a witness that he wore the uniform of the SS with pride, this only shows that he,

like the majority of the SS men, knew nothing about criminal aims. In judging the organization of the SS the International Military Tribunal was aware only of a small part of the whole, looking, so to speak, through a keyhole into a dark corner.

Nor could the defendant Karl Brandt have any personal knowledge of Hitler's secrets, for Hitler rejected him personally, as is shown by a number of affidavits. Since even in his own sphere, Medicine, the defendant Karl Brandt could not obtain information, how is he to have obtained knowledge of other matters?

I do not want to repeat the affidavits which give information about the basic attitude of the defendant Karl Brandt and show that he took up a position which was irreconcilable with the mentality supposed to be typical of the SS. In this connection I merely refer to the statements made by Pastor Bodelschwingh, Dr. Gerstenmaier, Mayer-Bockhoff, Philipp Prinz of Mease, and others.

If I as the Defense Counsel consider Karl Brandt's conduct as a whole and see the wounds he has received in the struggles of life, I must acknowledge that he is a man and not a criminal.

For the Tribunal's decision, however, the only conclusive fact is that the defendant Karl Brandt did not disturb the circle of international law, for he committed no war crimes and consequently no crimes against humanity. I therefore ask that defendant Karl Brandt be acquitted.

THE PRESIDENT: Before proceeding to hear the arguments submitted on behalf of defendant Sandloer, the Tribunal will take a short recess.

(A recess was taken)

MARSHAL: Persons in the court room with please be seated.

The Tribunal is again in session.

PRESIDENT: The Tribunal will now hear counsel for the defendant Handloser.

DR. WELTZ: For the defendant, Handloser.

Mr. President, please permit me first of all to draw the Tribunal's attention to those passages in my closing brief which I cannot bring here orally for lack of time.

THE PRESIDENT: Counsel for the defendant, Handloser, and all other defense counsel, may be assured that the Tribunal will give the most careful attention to the briefs which they will file or have filed on behalf of their respective clients.

LR. WELTE: Mr. President, your Honors, I regret exceedingly that none of the representatives of the Prosecution are present, who this morning treated the defendant Handloser in a rather peculiar way. It is important to me right at the beginning of my presentation to answer what the Prosecution this morning said regarding the similarity between the defense for Handloser and the defense for Keitel. Apparently by this parallel the impression was to be created that Handloser's case, that is to say the facts in the Handloser case, are similar to the facts in the Keitel case before the IMT. A person who makes such an assertion either is not familiar with the documents put in in the IMT trial or in drawing such a parallel he is pursuing a particular aim. This can be seen, and I may assume that the Tribunal as clearly recognizes this aim as I do. If, however, the Prosecution has brought up the ghost of the Keitel trial then I must be permitted to point out the following:

The Prosecution has stated, I quote, according to my notes: "In his defense Handloser refers to the fact that he, as Chief of the Wehrmacht Medical Services, had no right to issue orders." And Keitel made the same statements in his trial before the IMT. From the opinion of the IMT, from the judgment against Keitel, I shall read as follows:

"Keitel had no power to issue orders to the three branches of the armed Services". Thus, the IMT confirmed the correctness of Keitel's allegations on this matter. It must be assumed that the Prosecution is familiar with this judgment of the IMT and, therefore, knew that the IMT had set down in its judgment that Keitel had no right to issue orders. Nevertheless, however, it has here asserted the contrary. There is, however, one circumstance that makes this comparison between Handloser's and Keitel's case interesting. In the case against Keitel the Prosecution based its charges on an incredibly large number of documents. There were more than 2000 documents bearing Keitel's signature. The Prosecution emphasized at that time the convincing nature of that nature of the evidence and it was on this that the IMT's judgment was based

which deduced Keitel's participation in War crimes. And now, your Honors, take the 19 document-volumes put in in this proceedings by the Prosecution. You will find therein no single document that bears Handloser's name as a signature or as the person responsible for the criminal facts. This is an extraordinary fact but it is true. And, only this fact can explain why the Prosecution found itself under the obligation to do what I have just described their doing.

The Prosecution has charged Professor Handloser with special responsibility for, and participation in, tests which were conducted in concentration camps on involuntary experimental subjects contrary to recognized rules of medical science.

The indictment is directed against Professor Handloser personally, in his capacity and on account of his functions, rights, and duties as Inspector of the Army Medical Service and Chief of the Wehrmacht Medical Service.

By this, the Indictment rises to an importance which exceeds the frame of a personal indictment. The statements of the Chief Prosecutor are a collective indictment of German physicians and, in Handloser's case, of the physicians of the Wehrmacht, but the Prosecution has not adduced concrete evidence for this in the course of its submission of evidence.

This collective tendency, it seems to me, is a danger for the objective determination of the truth, for, in retrospect, single events which are without inner connection and dispersed over years, can easily be made to appear as the workings of a plan. This tendency can be recognized for instance in the question of the Chief Prosecutor (page 23 of the English transcript):

"Are the experiments a continuous list of atrocities, or has the entire group something in common?"

The Prosecution sees this "common thing" in the fact that the experiments had a "public connection" with the battle in the air and on the battlefield, as well as with the most important diseases which had "to be combatted by the German forces and authorities in the occupied

countries."

The prosecution believe that this explains: "the reason why the Wehrmacht and especially the Luftwaffe participated in the experiments."

From there it is only a small step to the statement often repeated in the individual facts that the experiments were carried out "in the interest of the Wehrmacht", so that, according to the old axiom "cui bono", the Wehrmacht, i.e. the medical service of the Wehrmacht, could be pointed to as the guilty party.

In an interrogation with Dr. Fischer I have dealt with this question in connection with the sulfanilamide experiments in Ravensbrueck. Evidence has shown quite clearly that the Medical Service of the Wehrmacht did not participate in these experiments in any way. During the cross examination by the prosecution, Dr. Fischer confirmed that the sulfanilamide problem was an important problem for the German Wehrmacht. That is correct. The full truth, however, is that the sulfanilamide problem was an over-all problem, one that is of equal interest to the civilian and military authorities. In the meantime even laymen understood that the gigantic, scientific battle between penicillin and sulfanilamides was an admirable competition for the health of humanity.

Dr. Fischer confirmed that in his answer to the question of the Prosecutor he did not want to say that this problem was of a purely military nature, but that it was a problem for all physicians.

The same also applies to all epidemic problems, which show even more clearly that the entire population, front line and zone of interior, occupied territories and prisoners of war, have the right to demand that all authorities responsible for sanitation must take steps to combat epidemics effectively. The words "in the interest of the Wehrmacht" are, as such, neither a proof nor an argument.

In the indictment and during submission of evidence by the prosecution it was not asserted that the experiments were carried out "on behalf of the German Wehrmacht". During submission of evidence, the prosecution has expressed, or, at any rate, tried to make it appear, that

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the Wehrmacht had caused or promoted these experiments, because it had an "interest" in them.

Counting objective interest in research with illegal experiments in this field is not evidence, but an invalid construction, unless causality is proven.

The prosecution not only had to prove, as it did, that Professor Handloser and his offices had an objective interest in such research, but that there was a special interest has by no means been proved against Professor Handloser in any single instance.

This submission of evidence by the prosecution, based on general reasoning in the case Handloser, is misleading, because it connects things which are generally valid and permitted with individual facts which were not symptomatic, but exceptional occurrences.

There is no country and no army in the world which never has carried out tests and experiments in the same fields. In this proceedings it has also become evident that research in all countries applied the same methods, including the experiments on human beings.

Mr. McHenry stated explicitly, page 5532 of the German and page 5465 of the English transcript, that the defendants in this trial are not being accused because of the experiments on human beings as such, and that these experiments are an approved method of medical activity. He then continues:

"The crimes (of the defendants) are in their majority connected with the use of non-volunteers for the experiments and also with the lack of care of knowledge during their experiments and things similar to these, which we can characterize as illegal actions." (Page 5465 of the English transcript).

The field of research in Germany was colossal. Universities, academies, medical-scientific institutions, laboratories of the big pharmaceutical industry, medical institutes (Robert Koch Institute, Institute for Experimental Therapy, Frankfurt), medical scientific institutes of the individual branches of the Wehrmacht, and finally the research institutes of the SS. All these institutes, conducted medical research in all fields during the war, especially about problems which appeared urgent, directly or indirectly as a result of the war.

If we compare this entire field with the individual facts listed in the indictment, we must establish that the experiments characterized as criminal are only the smallest parts of the entire research; furthermore, that the medical institutes for scientific research

which were under Professor Handloser's supervision are not charged with any of the experiments which are indicted here, even though nearly all fields of research which are under discussion here were also carried out in institutes which were under Professor Handloser's supervision.

If this is the case and if none of the experiments carried out in these institutes is indicted here, then an actual surmise, namely that arising from a satisfied interest, speaks for the fact that Professor Handloser as Inspector of the Army Medical Service was not interested in these experiments as they are indicted here.

In this proceedings the prosecution again and again has talked about "responsibility" as if only one specified conception of responsibility were existing. However, this conception has, as I already stated in my opening statement, many meanings. (Page 3127 and 3128 of the English Proceedings). The prosecution accuses Professor Handloser in all charges against him of "special responsibility for and participation in" the tests and experiments. It can not be recognized from the statements of the prosecution which importance with regard to criminal procedure the words "special responsibility" besides the word "participation" are supposed to have. One may assume that the prosecution desires here to make a distinction between "general" and "special" responsibility where apparently the "general" responsibility of a defendant is based on the office he held or to his membership in a group, and the "special" responsibility on the participation in a special case.

Whatever the case may be, if in these proceedings a "responsibility" is mentioned, only the criminal responsibility can be referred to. Such a criminal responsibility may arise if the defendant instigated, ordered, carried out or permitted the offense or if he participated in any other manner actively and by this participation made himself liable to punishment. Therefore, this results in

the fact that the accusation of "special responsibility for and participation in" are synonymous and can only mean that the defendant had participated in the facts of the individual cases in a manner for which he is liable to punishment. This finding seems necessary, because during the submitting of evidence the prosecution repeatedly asked, whether one of the defendants would take the responsibility for the field covered by his office or for the behavior of one of his subordinates. As here the establishing of the responsibility of a defendant for which he is liable to punishment is at stake, the question arises whether one can assume at all the criminal responsibility for illicit acts of another person.

The assuming of the responsibility for the field covered by an office exists only within the field of political and military responsibility. Ministers are responsible to Parliament, military commanders to the Supreme commanders having military jurisdiction without the question of a personal guilt having to be considered here.

For the establishing of the criminal responsibility which alone is under consideration here, only the legal principle that a guilty person is the very person who violates a law, who commits an illegal act, can be considered here. The punishment of a person for the behavior of another person would be incompatible with this principle. This also applies to the relation to the deputy in office and to the members of the office. Just as there is no deputizing in guilt, there is also no deputizing for punishment.

This principle of purely personal responsibility is being expressed in the sentence of INT (pages 16502/2) - Doc. HA-01, Figure 4, Doc.-Book Handloser I, page 2. According to this, the fact that criminal guilt is a personal one belongs to the most important generally acknowledged legal principles.

The International Military Tribunal has clearly objected to the

attempt to transfer the principles of political responsibility to criminal law. Military Tribunal No. 2 took the same point of view in the sentence against Milch, and gave the reasons in a most appreciable and detailed manner as follows:

"It must be constantly borne in mind that this is an American Court of Justice, applying the ancient and fundamental concepts of Anglo-Saxon jurisprudence which have sunk their roots into the English common law and have been stoutly defended in the United States since its birth. One of the principal purposes of these trials is to inculcate into the thinking of the German people an appreciation of, and respect for, the principles of law which have become the backbone of the democratic process. We must bend every effort toward suggesting to the people of every nation that laws must be used for the protection of people and that every citizen shall forever have the right to a fair hearing before an impartial tribunal, before which all men stand equal. We must never falter in maintaining, by practice as well as by preachment, the sanctity of what we have come to know as due process of law, civil and criminal, municipal and international. If the level of civilization is to be raised throughout the world, this must be the first step. Any other road leads but to tyranny and chaos. This Tribunal, before all others, must act in recognition of these self-evident principles. If it fails, its whole purpose is frustrated and this trial becomes a mockery. At the very foundation of these juridical concepts lie two important postulates:

1. Every person accused of crime is presumed to be innocent, and
2. that presumption abides with him until guilt has been established by proof beyond a reasonable doubt.

Unless the court which hears the proof is convinced of guilt to the point of moral certainty, the presumption of innocence must continue to protect the accused. If the facts as drawn from the evidence are equally consistent with guilt and innocence, they must be resolved on the side of innocence. Under American law neither life nor liberty is to be lightly taken away, and, unless at the conclusion of the proof there is an abiding conviction of guilt in the mind of the court which sits in judgement, the accused may not be dennified.

Paying reverent attention to these sacred principles it is the judgment of the Tribunal that the defendant is not guilty of charges embraced in Count Two of the Indictment.

These statements have a special and previously judged significance for the case Handloser, because Count #2 against Field Marshal Milch referred to the high altitude and freezing experiments and to the problem of responsibility in his jurisdiction., Handloser,

when questioned by the prosecution, stated that he took the responsibility within the sphere of activity for everything he instigated by an order, or by a general regulation, (3005/6) Page 2990/91 of the English. But the prosecution submitted neither an order nor a regulation, nor any other evidence which could be an order or a regulation, with regard to the experiments as such, or to the participation of one of his subordinates in such experiments as are indicted here.

The sphere of activity of Professor Handloser as Inspector of the Army Medical Service is clearly and definitely regulated by the Army Medical Regulations H Dv 21 part I Section 5 - 11
- Doc. HA-28a, Exh. 2 -

In this field he was the superior of the Army Medical Officers and was competent to issue orders, also with regard to research as far as research work can be ordered at all. But the prosecution neither has asserted nor proved,

that Professor Handloser as Inspector of the Army Medical Service issued orders or decrees to the research institutes subordinated to him - Army Medical Academy, Berlin, Mountain Medical School Sankt Johann Spotted Fever and Virus Institute Cracow-Lemberg Surgical Special Hospital of the Supreme Command of the Army in Brussels - to carry out illicit experiments on human beings, or that such experiments were carried out there.

The assertion of the prosecution that some Medical Officers of the Army came somehow into contact with persons or offices outside the army jurisdiction, which are guilty of illegal experiments on human beings, would only be important if these Medical Officers of the Army would have committed a punishable act or participated in such an act and if this could actually be charged to the improper behavior of the defendant Handloser.

The prosecution apparently assumes that the highest authority (i.e. chief) of a large sphere of activity has knowledge of all happenings within this sphere.

Furthermore it does not conform to the actual experience that the person exercising the highest powers of command within the military hierarchy of the army is in some degree the originator of all orders carried out by a subordinate in this hierarchy. If an order has been issued it must be determined who of all the supervising chiefs of the offices in this hierarchy is the originator responsible before criminal law for this order. If no special order was issued it must be examined whether the incriminating behavior was prompted by circumstances, which lie within the scope of responsibility before criminal law of the defendant personally, such as orders and regulations which rendered possible the criminal behavior of a subordinate or appropriate consent, to commit the criminal offense before its beginning or its completion.

In the course of these proceedings, the prosecution would have to assert and to prove in each case:

- a) that the behavior of the subordinate constitutes a punishable offense
- b) that this behavior was the result of either
 - 1) a special order or general directive issued by the defendant as superior, or
 - 2) consent given by the superior prior to the offense, i.e., omission of a duty-bound prevention.

Only in this case can the defendant be charged with being an abettor, offender or accomplice, or participator.

In my Closing Brief I have dealt with the various details which have been submitted by the Prosecution in order to deduce Handloser's responsibility from the contact of subordinate medical officers with persons or agencies who are directly accused. In principle I have to say -- and this goes for the Prosecution's Closing Brief as well -- that in no case is there any substantiation nor proof of the factual elements necessary according to penal law.

The Prosecution described the activities of the subordinates in a general form, as for instance: Visit Prof. Eyer - Dr. Schmidt at Buchenwald. Visit Dr. Wirth in Strassburg. Visit Dr. Dohmen in Strassbourg, but they left us in the dark how far these activities can be judged criminal and on which facts to base a criminal responsibility of Handloser.

In no case the assertion has been put forward concretely of a casual activity of Handloser's nor of his knowledge.

It seems as if the Prosecution believe that the contact of one of Handloser's subordinate with a person or agency who is incriminated by some experiment were sufficient to prove: knowledge, condoning and promoting of these experiments.

This would be a construction but no evidence of facts according to penal procedure.

Furthermore, the Prosecution seems to think that official supervision over a medical officer would produce the result that his attitude and his knowledge could automatically be regarded as the attitude and the knowledge of the highest superior, who would be Professor Handloser. This would be incorrect because it is in contradiction to the fundamental principle of individual guilt.

If one desires to arrive at a correct concept of the term official supervision and is to apply its content to the problem of this trial in the case of Handloser one must not rely on a theoretical analysis of the term, but one has to draw a visual image of this institution rooting in facts and in practice.

Official supervision embraces the right and the duty within an agency or channel of command to order all that to supervise it, or to have it supervised, which is necessary and possible, in order to:

- a) secure the execution of orders and directives issued by a higher agency;
- b) guarantee obedience to and execution of orders and directives issued by his own agency;

c) supervise obedience to the general principles of military and medical-military service.

The crux in this trial, which is a trial of Professor Handloser's person, is again not the assertion that Handloser has violated his duty with respect to the general official supervision in his capacity as Medical Inspector of the Army, but the Prosecution seems — again and again one can only assume so — be haunted of a concept of a concept of personal and immediate official supervision of Professor Handloser over all medical officers of the Army and over all agencies subordinated to him.

Especially strongly this is evidenced as soon as the discussion turns to the Military Medical Academy and to the medical officers who were active there.

Exactly when discussing this case of the Military Medical Academy — I draw Your Honors attention to Document HA 29, Exhibit 4, page 60 of the Document Book — Professor Handloser clearly expressed the purpose and aim of this institute, its organization and its relation to him in his capacity as Medical Inspector of the Army. The Military Medical Academy was an independent institution charged with the following tasks:

- (a) additional training of new classes for medical officers (training group A and training group B)
- (b) medical and practical advance training of medical officers and clinical treatment of Army medical problems and tasks (training group C). These problems were attached and solved just as they were in any other academy, on the academy's own responsibility.

To evaluate correctly the subordination under the Army Medical Inspector, one should compare it to the subordination of a University under the "Ministry of Culture". From this it follows, that as far as treatment and carrying out of clinical tasks are concerned, those persons were responsible for it who had been assigned to the Army Medical Academy for this purpose. Prof. Handloser, as Army Medical Inspector, could only be considered for an evaluation or decisions of questions if they were submitted to him directly or through official channels. In this trial we can only be concerned with questions which

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were treated by training group C. If problems arose, whose decision, according to the opinion of a Chief of the Institute, should be reserved for a higher authority, then the Chief of the Institute submitted the matter to his Chief, i.e., the Commander of Training Group C. If the latter considered himself unable to decide then the Commander of the Army Medical Academy was competent for the decision. Only if the affair exceeded the competency of the Commander of the Army Medical Academy, was it brought to the attention of the Army Medical Inspectorate and there it came to the Chief of the Department for "Science and Health Research". Again only if the latter too, believed that important fundamental questions were involved, were they submitted for decision to the Army Medical Inspector after the Chief of Staff of the Army Medical Inspectorate had been informed.

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Because of this limitation of competency and working arrangement it is impossible that Prof. Handloser could have exercised a direct and personal supervisory authority over Medical Officers which were active in the individual institutes of the training group C of the Army medical academy.

However the Army Medical Academy was only one of altogether seven institutes which were directly subordinate to the Army Medical Inspectorate.

They were located in Berlin, Cracow-Lemberg, in St. Johann and in Bruxelles. All institutes had the same military relationship as the Army Medical Institute so that the official business was transacted in the same manner with these institutes.

But these Institutes were only a fraction of the units and tasks which were part of Professor Handloser's field of activity. If one considers now that Prof. Handloser was not only Army Medical Inspector, but also at the same time Army Physician and Chief of the Army Medical Service in which capacity he had equally important and time consuming tasks and (if one considers too) that, as has been proven, he very frequently went on official inspection trips in front line areas and only personally present in Berlin during 1/10 of his time, then one can gain the proper point of view for judging the question whether the duty for supervisory authority of Prof. Handloser made at all possible a personal and direct control of all Army Medical Officers active in units and institutes subordinate to him.

It could only be the task of a Medical Officer heading such a vast field of problems to take care, within the frame work of his duty for supervisory authority, that the intermediate superior officers had sufficient qualifications for their jobs and that the military report and communications system was organized as well as possible. It was Prof. Handloser's task, in his field of activity, to gain the proper control of the "overall picture". Prof. Handloser performed his duty

as supervisor by being most fastidious in the selection of the subordinate "Leading Medical Officers", by doing everything possible to convince himself personally how the tasks were being accomplished and by scrutinizing most carefully the reports in the field of the Medical Service, in substantiation of which he has put in evidence Dok. HA-65, Exh. 62.

The Prosecution has produced no facts going to prove that Prof. Handloser, after being informed of culpable behavior on the part of one of his subordinates, would have failed to take steps. In view of this fact, it is not necessary to present proof of this. But it is nevertheless worthy of note that the evidence brought forth has given symptomatic indication that Prof. Handloser, when he did have knowledge of abuses, took care to have them stopped. I refer to the affidavits of the Swiss Oberstarzt Dr. Theodor Brunner and the chairman of the Mixed Physicians Commission, the Swiss Oberstarzt Dr. A. von Erlach.

The charges brought against Handloser can be characterized as lacking in concrete statements of incrimination.

The Prosecution has produced no documents and no witnesses to substantiate its charge of personal particular responsibility and participation in the individual deeds.

Go through the 19 document books and supplementary documents put in by the Prosecution and you will look in vain for Handloser's signature under an order or directive. One single document (Doc. 1323-exh 452) bears his signature, and this document is one of the most convincing documents in his exoneration.

I may be permitted to ignore the various affidavits by Rudolf Brandt which the Prosecution has here put in evidence. The value of this evidence is patented. If the Prosecution feels that it must have the co-defendant, Rudolf Brandt, confirm assumptions which the Prosecution cannot itself prove and for which Rudolf Brandt also, according to his sworn testimony, lacks all concrete substantiation.

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Prof. Handloser was for 3 3/4 years (from 1 Jan 1941 to 31 Aug. 1944) Army Medical Inspector. If the Prosecution has not been able to produce one single document from nearly four years of the defendant's activity as Army Medical Inspector that bears on the criminal experiments and that contains Handloser's name as signature or as the person responsible, then this fact refutes prima facie the assumption of the Prosecution.

Prof. Handloser as Army Medical Inspector, was the highest man in the military-medical hierarchy of the Army. This was an important position and his staff, the Army Medical Inspectorate, was a large organization of which the Chief of Staff was Generalarzt Dr. Schmidt-Bruecken. This staff was in Berlin whereas Handloser spent 90% of his time in Headquarters at the fronts. All receipts, letters, reports, went through the registry office, the departmental chiefs and the Chief of Staff. Prof. Handloser received nothing that had not previously come to the attention of the registrar, the departmental chief or the Chief of Staff. All conferences that Handloser had with his department chiefs were also known to the Chief of Staff who, as a matter of principle, had to be informed of them beforehand. All discussions with third parties were arranged for by the Chief of Staff; he saw to it that an expert was present at such discussions.

If Professor Handloser had conferences with other officers or outside his own office he was accompanied by an expert in the matter that was to be discussed.

The results of these discussions were in every case set down in some identifiable form such as orders, letters, directives, file notes. The orders went down through the hierarchy to the last office, which was to carry the order out. The directives were distributed to a larger or smaller number of other persons. The circle of persons who, in Prof. Handloser's immediate vicinity and in the larger field of the office in question, had to have knowledge of every fundamental or general decision or directive of Prof. Handloser's was very large.

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Therefore Prof. Handloser could do nothing, order nothing, plan nothing, without its happening that this inevitably became known in the outside world and to a specific circle.

The person who inevitably knew of occurrences within the Army Medical Inspectorate was the Chief of Staff Generalarzt Dr. Schmidt-Bruecken; the person who inevitably knew of the occurrences in the Office of the Chief of the Wehrmacht Medical Services was the Chief of Staff Generalarzt Wuerfler. The functions of these two Chiefs of Staff have been carefully described by Prof. Handloser in the affidavit HA 29, exd. 4 and the two chiefs of staff have confirmed under oath the correctness of his description. In this connection the mutually corroborative testimony is important that within the sphere of Handloser's office absolutely nothing could take place of which the chiefs of staff could have been ignorant, and that they in their official positions never had knowledge of experiments such as are at issue in this proceeding.

The second category of those who knew of occurrences was the leading and chief medical officers, since they were the intermediaries between top and bottom and between bottom and top, so that every order or directive from above, as well as every report from below had to pass through them along official channels.

From this category the defendant has spontaneously been sent numerous affidavits which I have put in evidence and which show that Handloser never issued orders or directives which violate the recognized precepts of medical practice. The same is true for the category of consulting physicians, who have confirmed Handloser's exemplary orientation as a doctor.

Finally, the sworn testimony of the co-defendants and witnesses: Prof. Karl Brandt, Prof. Gebhardt, Prof. Rose, Prof. Krugowsky, Generalarzt Wuerfler, Generalarzt Schmidt-Bruecken, Generalarzt Dr. Jaeckel, Prof. Gutzeit, has proved that Prof. Handloser never spoke with any of these men about experiments on human beings in concentration camps.

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What an extraordinary man Prof. Handloser must be if he, whether as instigator, abettor, or participant, had anything to do with the experiments on human beings in concentration camps. Although, as we have seen, his activities were subject to continuous and inevitable check, he would have had to be able, in an incredibly subtle way, to keep secret or to camouflage, throughout the entire duration of his activities as Army Medical Inspector and Chief of the Wehrmacht Medical Services, everything that referred to human experimentation in concentration camps. Handloser, as the "man behind the scenes," would have had to conceal, in a masterfully fashion, his "true" intentions and his "criminal" actions from his chiefs of staff, his associates, his leading medical officers, his consulting physicians, and even those who knew of the human experiments, so skillfully that no one had any inkling of them.

Is that possible? No, Your Honors, that is impossible. The Prosecutor himself said "there is no secret about Handloser" (p. 3630 German transcript). These words are important and are valuable in Handloser's defense; his actions, his orientation, his personality, are clear as day. This is so far true that in his case even that can be seen which is otherwise obscure in criminal cases; the subjective aspect of the facts, his true intention and his medical, soldierly, and human orientation.

This becomes entirely clear from his speeches before the consulting physicians and from the prefaces that he wrote for the printed reports on the conferences.

The Prosecution has put in evidence various excerpts from the conference reports from the consulting conferences and in order to incriminate the defendant Handloser, has referred to him as the man in charge of the consulting conferences. In order to find the truth it appears important to examine the words that Handloser uttered at a time when he did not have to concern how Germany's enemies would construe his

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words. If he had been in any way connected with innovating new methods of research that deviated from the previously accepted rules, if indeed, as the Prosecution asserts, he had provided the incentive for the experiments in Buchenwald, what would have been more natural than for him to claim the credit or at least to make his interest known in such representative addresses. In point of fact, however, Handloser's addresses contain no word that allows one to deduce that he even had knowledge of these experiments on human beings. The defendant Handloser, also, cites his statements and asserts that no chief of the medical services of a nation waging war could have spoken differently in essence.

This brings me to the count in the indictment "Typhus Experiments," the only count of the indictment in which Prof. Handloser is brought into immediate association with the incriminating experiments.

The following constitutes the typhus problem in the Handloser case:

The prosecution states that Professor Handloser, because of the Army's interest in the production of typhus vaccine, used the SS and its research institute in Buchenwald to make use of new methods in the matter of artificial infection with typhus bacilli. These methods were not in accordance with the recognized rules for medical research.

During presentation of evidence by the prosecution and during cross-examination the interest which Prof. Handloser had in the typhus problem was emphasized again and again, a fact which was never contested by Prof. Handloser but which has no probative value in its general aspects, but which is capable of making the finding of the judgment more difficult.

The typhus problem comprises:

typhus research

production of typhus vaccine

the procurement and distribution of typhus vaccine.

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Professor Handloser never contested to have been interested in all these questions. He definitely denied, however, that, within the framework of his line-of-duty fight against typhus, he was interested in typhus research which is solely under indictment here.

It is confusing to derive the assumption that an interest in illegal and improper research existed from a duty-bound interest in research itself. This would constitute a reversal of the burden of evidence. Rather it is to be assumed because of lack of indications and evidence that a duty-bound interest in definite research according to legal and recognized medical rules was intended i.e., the normal state of affairs is rather to be assumed.

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It is equally incorrect to point to the interest of the Army in an attempt to characterize the general assumption.

Professor Handloser, during the critical period (end of 1941, beginning of 1942) was only medical inspector of the Army. He became Chief of the Army Medical Service only on 1 August 1942. Not only the Army, however, but also the other branches of the armed forces, the Waffen SS, the Home Front, the prisoners of war -- that is, the Allies -- and the population of the occupied territories were interested in combatting typhus. On top of that, Professor Handloser, as Army Medical Inspector, had the research Institute for virus of the OKH in Krakau/Lesberg under his jurisdiction which produced typhus vaccine from the intestines of lice and he worked on its completion and on its increase of production.

After all, it was not as if one had still to invent typhus vaccine.

Besides the Weigl vaccine, which was made from intestines of lice and which I have mentioned, there were still the various processes of vaccine production from hen eggs and the vaccine according to Derand and Giroud, for the production of which the lungs of guinea pigs were used. These vaccines had already been tried and proved and used to a limited extent. For these vaccines then only the proof of their efficacy on a large scale in relationship to the Weigl vaccine was still missing.

It was necessary to carry out this test in order to achieve the largest degree of certainty.

The normal method for this was the epidemiological experiment; that is, the vaccination of a large number of people in areas threatened by typhus by using the vaccines to be tested, in equal amounts, side by side. Such a vaccination on a large scale, however, has nothing to do with experiments as they are indicted here. It is a preventive vaccination with a tested and tried vaccine, at least on a limited scale.

In first place, however, stood as primary and decisive measure in the struggle against typhus the combatting of the louse. From the very beginning of the typhus crisis all the offices of the Wehrmacht (Medical Officers and troop leaders) were reminded, through large scale propaganda, of the principle: "the struggle against typhus consists in the struggle against the louse." This sentence was disseminated on hundreds of thousands of posters. Simultaneously, on the entire Eastern front both decentralized and centralized delousing stations were set up. In addition, the troops were, to a consistently increasing extent, provided with louse powder.

At the conference of the consulting physicians in May 1942 the typhus problem occupied the center of the stage. Following four basic lectures there was a discussion in which 23 speakers participated. Professor Habs said, "the basic principle must remain 'delousing controls typhus; on the front hot air delousing is sufficient'" (page 52 of the conference report). Policies for the combatting of typhus which were drawn up at this conference begin with the sentence, "the combatting of the body louse is the basis for the combatting of typhus." That was the situation at the end of 1941.

Professor Handloser's interests are clearly to be seen. They were (a) primarily the combatting of the louse, (b) increasing the production of typhus vaccine. Thus, it was not the problem of typhus research that stood in the foreground but the extension of the struggle against the louse and the increase in the production of the reliable Weigl vaccine, as well as of other tested vaccines.

This latter problem was the deeper reason and incentive for the letter that Professor Handloser sent to the Reich Health Leader, Dr. Conti, who was competent for the Government General and the Homeland, on 10 November 1941 (Document No. 1323, Exhibit 452). This is the only prosecution document that bears Handloser's signature and it proves the correctness of his orientation toward the typhus problem. It confirms

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that the OKH Institute in Gracé-Lamberg had been asked to provide typhus vaccine but that the Army's requirements could hardly be met by this Institute and that increasing requirements were to be expected for the Homeland. Therefore, Professor Handloser proposed that the production of typhus vaccines should be placed in the hands of the pharmaceutical industry.

Pursuant to this suggestion Staatssekretär Dr. Conti, who, as I have just said, was competent for the Homeland and the Government General, ordered: "discussion of production of typhus vaccine by the pharmaceutical industry." He oriented the Robert Koch Institute, which was subordinate to him, the Behring Works in Marburg, which had already previously delivered typhus vaccine and the I.G. Farben Industrie, whose representatives, Demnitz and Zahn, took part in the discussion on 29 December 1941 in the Reichs Ministry of the Interior.

It can accordingly be assumed that the conference on 29 December 1941 in the Reichs Ministry of the Interior on the typhus situation is to be attributed to Professor Handloser's suggestion in his letter of 10 November 1941. But there can be no doubt that this conference was to and did concern itself solely and exclusively with the question of vaccine production and not with the question of research methods such as were used in Buchenwald.

THE PRESIDENT: Counsel, your time has expired.

DR. MELTE: I deeply regret that; because of that I shall not be in a position to read the most important passages in my plea; but perhaps I could use the 20 minutes that Handloser would have for his final statement — 15 to use in his place.

THE PRESIDENT: How long would the balance of your argument consume, counsel?

DR. MELTE: I believe 20 minutes would suffice, Your Honor.

THE PRESIDENT: Well, you may have 15 minutes at the opening of tomorrow afternoon's session.

Now, this Tribunal will not be in session tomorrow morning. The Tribunal will now be in recess until one-thirty o'clock tomorrow afternoon. Dr. Belts may then have 15 minutes which is not to be taken as a precedent by other counsel. I suggest other counsel remember to read the more important portions of their arguments first instead of at the last.

The Tribunal will now be in recess until one-thirty o'clock tomorrow.

THE MARSHAL: The Tribunal will be in recess until one-thirty tomorrow afternoon.

(The Tribunal adjourned until 15 July 1947, at 1715 hours.)

Official Transcript of the American Military
Tribunal in the matter of the United States
of America against Karl Brandt, et al,
defendants, sitting at Nurnberg, Germany, on
15 July 1947, 1330-1700, Justice Reels presiding.

THE MARSHAL: Persons in the court room will please find their
seats.

The Honorable, the Judges of Military Tribunal I.

Military Tribunal I is now in session. God save the United States
of America and this honorable Tribunal. There will be order in the
court.

THE PRESIDENT: Mr. Marshal, will you ascertain if the defendants
are all present in court?

THE MARSHAL: May it please your Honor, all the defendants are
present in the court.

THE PRESIDENT: The Secretary General will note for the record
the presence of all the defendants in court.

Counsel for the defendant Handloser has been allowed an extra
fifteen minutes to conclude his argument. He may proceed.

DR. KALT for Handloser: I shall continue with my final plea.

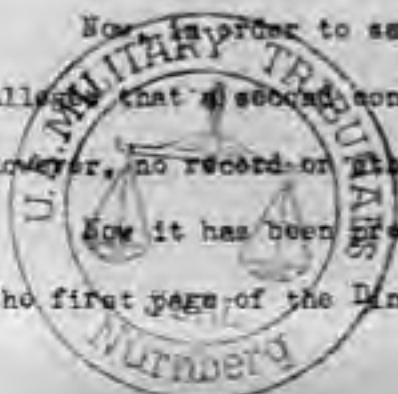
The basic assertion in Handloser's case is his alleged participation
in typhus conference which took place on 29 December 1941, and where, it
is alleged, the decision was made to conduct typhus experiments in the
Buchenswald Concentration Camp.

The Prosecution has not proved this fact, quite the contrary has
been proved.

On 29 December 1941 a conference about the typhus vaccine problems
took place in the Reich Ministry of the Interior. Not even the Prosecu-
tion has alleged that Handloser took a part in it.

Now in order to save the note in the Ding Diary, the Prosecution
alleges that a second conference took place on the same day about which,
however, no record or other document has been submitted.

Now it has been proved that, by expert opinion and Dr. Kogon, that
the first page of the Ding Diary in the formulation as submitted has been



falsified, therefore no probative value can be attached to it.

Neither in the affidavits Ding-Schuler NO-257, Dr. Hoven NO-439, and Mrugowsky NO-423, which deal with the typhus experiments in Buchenwald, nor in the entire remainder of the Ding Diary are Handloser's name and the Medical Inspectorate of the Army mentioned at all.

Above and beyond this, this one testimony of all alleged participants in the conference who are still alive refutes the statement that a conference of the alleged persons, leading to the alleged result, ever took place.

And finally, Dr. Rose's testimony under oath and the camouflage letter of Mrugowsky of 5 May 1942 prove that Dr. Conti instigated the experiments.

Also, if we suppose that Handloser, in his capacity as Medical Inspector of the Army, was present at such a meeting, it would be in contradiction to all logic and experience of life that he was never in Buchenwald, no report about the experiments ever reached the Medical Inspectorate of the Army, Handloser never spoke about the matter with his Chiefs of Staff, Handloser never spoke with Dr. Ding.

Handloser was Medical Inspector of the Army and Chief of the Medical Service of the Army. His position as Medical Inspector of the Army was strong and vested with authority to give orders.

The Prosecution, however, strives to stress Handloser's position as Chief of the Medical Services of the Army and to enlarge its importance because only thus they can construct a contact with the Medical Services of the Luftwaffe and of the Waffen-SS and thus establish a relation with the research work which is indicted here.

The investigation of the functions, rights, and duties of Handloser in his capacity as Chief of the Armed Forces Medical Service has occupied much space in the argument of the prosecution and the defense. This appeared necessary to the Prosecution because the edicts of 1942, 1944, and the Service Regulation 1944 gave no indication for the asserted competence of Handloser, and furthermore, because no evidence of a

personal criminal responsibility of Handloser, as Chief of the Armed Forces Medical Service, could be produced in regard to the illegal experiments or his participation in them as charged.

If the Prosecution attempted to prove Handloser's authority to issue orders, it was not done to show that he had issued ordinances of this type by reason of this right to issue orders, for they do not exist. It was done to demonstrate his duty of exercising supervisory authority in this field, to show that he had to receive reports, and finally to be able to assert that he had incriminated himself because he had done nothing. The evidence submitted has shown quite clearly that it was his duty to direct the adjustment of personnel and material affairs within the branches of the Armed Forces as is evidenced by the first sentence of the decree of 1942. Within the scope of this sphere of duties, Professor Handloser was charged with the combination, or as it was generally called, the coordination of all common problems in the field of the Armed Forces Medical Service.

The task of coordination given to Professor Handloser did not mean that all problems of the medical service, which were of the same nature, or capable of being consolidated, automatically came under the jurisdiction of the Chief of the Medical Service. It was rather his duty to examine which part of the immense Medical Service was suitable for coordination. Whenever Handloser thought that a certain department was suitable for coordination, he tried to reach an agreement with the Medical Chiefs of the branches of the Armed Forces; for, since he had no powers of command, the coordination could only take place in conjunction with the Medical Chiefs. After the coordination had been accomplished, he was empowered to issue directives in this field which did not have the character of an order.

It has become, clear, furthermore, that neither by reason of the decree of 1942, which was competent for the period from 1 August 1942 to 31 August 1944, nor by reason of the decree of 1944 and the Service Regulation, Handloser was the Chief of the Medical Service of the Wehrmacht branches or the Waffen-SS, and that therefore he had no jurisdiction or supervisory authority in these organizations. The testimony of Handloser, Gensken, Gebhardt, Generalarzt Dr. Wuerfler and the official remark in the 1944 Service Regulation have shown quite unequivocally, regarding the relation of the Chief of the Medical Services of the Wehrmacht and the Medical Services of the Waffen-SS, that relations between the Wehrmacht Medical Service agencies and the Waffen-SS was confined in time and substance to the necessary tactical subordination for supplying medical service for the Waffen-SS divisions during front line commitment. The testimony further shows that Professor Handloser had no influence on the medical system of the Waffen-SS, that is, on affairs and scopes of activity of the Medical and Sanitation Service of the Waffen-SS.

The research of the Luftwaffe, according to testimony of Professor Schroeder and Dr. Becker-Freyseng, was not under the jurisdiction, nor under the supervisory authority of Handloser as Chief of Medical

Services.

I come now to the conclusion:

The prosecution defined the National Socialist ideology as the source of disregard for human life and thereby of the illegal experiments. This is one of the imponderable arguments for the greater readiness to adopt an attitude which deviates from the general ethical standard. The prosecution did not submit any special statements on this point, but merely expressed in a general way that the German medical profession as a whole was "infected by the paralyzing poison of Nazi superstition."

Professor Handloser has stated his attitude toward National Socialism on the witness stand. Numerous affidavits have testified that he consistently took the course of an upright man and that he opposed Party influences whenever they were contradiction to his ethical views.

If you read the opening statements of Professor Handloser in the printed records of the meetings — please do this — you will acquire a picture of his character as doctor and soldier. They are the confession of a man, who had devoted the whole of his life to a profession, the whole purpose and end of which is to help suffering humanity in its darkest hours. When war comes, with all its horrors, wounds and pestilences, when men are called up to kill and destroy, it is the doctors who, in the guise of soldiers, stake their all, under the ensign of the Red Cross, to heal or at least alleviate the pains and diseases of war. While the brutal business of war weakens the ethical laws, the highest achievement of culture and the soldier on the field loses his reverence for human life, the medical officer's task is increased far beyond the level of peacetime ethics. In the ethical chaos of war he is the symbol of human and brotherly love, for he is called upon to help friend and foe alike.

That the German doctors of the Wehrmacht in toto fulfilled this high task is proved convincingly among other things by the fact that no complaints were made about what they did, either on the battle front,

on the home front, in the occupied territories, in military hospitals, or in prisoner of war camps. This ethical attitude is confirmed also by the affidavits of the Swiss doctors Dr. von Erlach, and Dr. Bruegger. Professor Handloser will not claim as his merit; for the mass of German doctors, most of whom came from civil life, brought with them the ethics of their profession.

But I, as his defense counsel, may point out that only a strong character, rooted firmly in the ethics of his profession and of humanity, could maintain the spirit of the whole medical officer corps on such a high moral plane during such a war.

You have the opinion of his military superiors and the testimonials of the leading general physicians under him, the unsolicited affidavits of the Generalaerzte in the Garnisch PW camp, and of the Generalaerzte in Munster Camp V. The complementary counterpiece to this is the testimony given him by the leading general physicians under him. The picture which emerges is that of a truthful and sincere doctor and soldier, irreproachable as a superior, upright and honest as a subordinate. This picture is completed by the numerous other largely spontaneously sent affidavits concerning the nature of the man Handloser. I think the plain examples of Dr. Drexler in his affidavit prove more adequately than any words that Handloser acted up fully to the principle of humanity, and that a person showing these characteristics cannot possibly have had any connection with and cannot possibly have approved of experiments which violate the principles of medical ethics. Professor Handloser, however, denied all knowledge of such connections too, and I think I have proved that this attitude is credible, and why. The testimonies of the two Chiefs of Staff, the Generalaerzte Dr. Wurfl and Dr. Schmidt-Bruecken, given under oath, appear to me convincing for the professional side of the problem. Moreover, in the last instance it is a question of Professor Handloser's credibility, which may be deduced from an estimation of his whole personality.

There you have a clear picture of the man before you. At the interrogations which preceded this trial and in the witness box he has represented his activity as Army Medical Inspector and Chief of the Wehrmacht Medical Service with complete frankness. His statements have not been quashed by the evidence produced by the prosecution but coincide in every point with the evidence produced by the defense.

I think I may say that the credibility of Professor Handloser is beyond all doubt. If he ever pursued a wrong road in his life -- and who among us has not erred at some time -- he did not hesitate, as an honest man, to perceive and confess the error of his ways. He would not have behaved otherwise in this trial either, if he were conscious of guilt.

In the consciousness of having done his duty as Army Medical Inspector and as Chief of the Wehrmacht Medical Service, to his nation, to the wounded and sick soldiers of all nations, to the prisoners of war, and to the populations of the occupied territories to the best of his ability, in the firm confidence that this High Tribunal will apply the principles of justice that are conducive to international conciliation, he awaits your decision with the calm which can only come from a clear conscience.

THE PRESIDENT: I would inquire of the Secretary if the translation of the argument of counsel for defendant Rostock has been received in the court room and delivered to the interpreters?

Counsel, I am informed that the translation of your argument as counsel for defendant Rostock has not yet been received.

DR. PRIBILLA (Defense Counsel for defendant Rostock): Mr. President, my closing brief has not yet been translated by the Translation Branch, but, through the kindness of the court interpreters, the short excerpt from it that I intend to read here has been translated and the interpreters have one copy of that translation.

THE PRESIDENT: Do I understand from the interpreters that the translation of the argument which counsel for defendant Rostock will

make is available to them?

INTERPRETER: That is correct, Your Honor.

THE PRESIDENT: The Tribunal will now hear from counsel for the defendant Rostock.

DR. PRIBILLA: Mr. President, Your Honors:

The great English historian and sociologist Thomas Carlyle once said: "Your life, and were you the humblest of human beings, is not a wild dream but a lofty fact." I do not want to speak to you in this court room without first recalling this saying and thereby seeing before my eyes the picture of the great number of our fellow human beings whose life has really become a wild dream. The fact, on which this trial is based, that defenseless human beings were used by doctors of my country for experiments and in part died after suffering tortures, cannot be denied. I myself would doubt the clarity of my judgment as a German jurist if I did not come to the realization that general human rights such as the fundamental standards anchored in all civilized nations have been violated thereby. Medical science should bring help and healing to suffering humanity. I am proud to state that it was German doctors who, in the last century, saved millions of human beings from the most serious and fatal diseases by their research. Let me remind you only of names like Robert Koch, Emil von Behring, Paul Ehrlich, Theodor Billroth, and August Bier, or medicines such as Germanin, atabrine, Salvasan, diphtheria serum, tetanus serum, and many others. If it were possible to achieve such decisive results in any other way, this would only confirm the actual truth, that no one, no matter how highly placed and no matter how important his aims, has the right to lower other human beings to the level of guinea pigs by force. How could a man venture to dispose in that way of the life and health of his fellow men, be they ever so humble? It seems to me that this involves a fundamental contradiction to the duty of the doctor, a violation of the dignity of the individual, and a

presumption which cannot remain without horrible results. There may be doubtful cases, there may be borderline cases, but the solution of these questions can be based on only one principle, which is that all creatures in human form have an equal right to life and health. This I consider the decisive point, and I was deeply disturbed to learn in the course of this trial that in other countries, too, points of view have obviously arisen among the medical profession in the last few decades which seem to be irreconcilable with the principle just stated. If this is so, then no distinction must be made as to whether conditions in Germany or in the Philippines or elsewhere are at issue. It may be justified in the case of new medicines to test them on sick persons in the hope of healing them, but no one can persuade me that it can be permissible to infect human beings against their will with dangerous diseases. As defense counsel I can take no other stand. In all such cases the facts must be investigated and the limits of law and right must be made clear to those who violate them. Should a thorough investigation disclose that insufficient clear legislation bears part of the responsibility, should it be discovered that the general attitude of medical research workers even in other parts of the world has become all too broad on this point, then these facts would have to have some weight in lessening the guilt of offenses which have been committed. For future cases, however, it seems to me that clarity is urgently needed.

In view of the suffering and the victims with which we have become acquainted in the course of all these trials, summary justice might have been the expression of indignant human feeling. In the general moral and material chaos of the postwar period, who would have asked whether one life more or less had been extinguished? But that would only have lengthened the chain of injustice and made impossible the process or moral convalescence which we hope for. You, Your Honors, have with rare poise and patience investigated both the facts which form the basis of the indictment and the complicated question of what

direct or indirect responsibility these defendants have for the criminal experiments. You have immersed yourselves in the extremely complicated network of competency of a totalitarian state at war, with its big struggles for power and its antagonisms. The only purpose of this effort can be that the judgment which you pass may be as just as possible. If the expert Professor Leibbrandt was right with his assertion that the medical profession in all countries in the world has relaxed its vigilance against abuses during the past decades, then this can be changed only by a judgment which really corresponds to the highest demands of our profession, which weighs everything and cleanly separates the guilty from the innocent.

Only with such a judgment will it be possible to help humanity to progress a bit after such terrible reverses. Only then can this judgment become a law and a guide for future generations of doctors throughout the world. Never before has there been such a trial, in which leading doctors of a great country were under such serious indictment, and so a just judgment of the High Tribunal will establish the limits and borders of modern medical science. Perhaps in the near future doctors throughout the world will mention it in the same breath with the oath of Hippocrates, which has been mentioned so often here.

If we now, with the knowledge we have gained from the presentation of evidence, turn to the particular case of the defendant whom I represent, Professor Paul Rostock, I believe that the extreme thoroughness of the trial has in this case brought clarity which will permit you, Your Honors, to reach an absolutely clear verdict. I believe that a picture of this excellent man and doctor has been impressed upon you by his personal examination and by the testimony of the witnesses. First I shall bring out the facts which even the Prosecution does not deny. Who is Professor Paul Rostock? Was he a doctor in the SS or even a member of this organization? It has been proved that he was not. Did he carry out experiments on human beings in concentration camps? He never even set foot in a concentration camp. Did Rostock himself perform experiments on involuntary experimental subjects? No one

alleges that he did. Are there documents which show that he ordered or even suggested such an experiment? After the end of the presentation of evidence, we see that there is no such document. Moreover, the Prosecution has not submitted any document addressed to Rostock or signed by him which might indicate any other participation in such an experiment or even his knowledge thereof? Now, what did Rostock actually do during the war. He was the busy head of the big Surgical University Clinic in Berlin and also the dean of the medical faculty of the University of Berlin. Everyone agrees that he was an outstanding doctor and scientist. This is attested by his numerous scientific textbooks and other publications and the honors which he obtained for his ability, without any influence of politics or war. The picture which his associates have drawn from their close acquaintance with him and which represents him as a tireless helper of his patients, as a doctor who did not leave the clinic day or night during the worst air raids, so that he could help his patients and the newly admitted victims of the raids - this picture remains uncontradicted. How did this man come to be in the dock, and what remained of the Prosecution's supposed reasons for suspicion after the presentation of evidence? To sum up, there are three wider fields within which the Prosecution wants to connect the Defendant Rostock with the criminal experiments. First, during the war Rostock was a medical officer in the German army reserve and held the position of an adviser in the surgical field to the Inspector of the Army Medical Service. In this capacity Rostock heard the lecture of the co-defendant Gebhardt at a meeting of Consulting Physicians in 1943, together with over 100 other doctors. He heard a report about experiments which had long been completed, and, together with over 100 other prominent participants, he heard from the mouth of such a highplaced man as Prof. Gebhardt that the legal aspect had previously been thoroughly clarified and did not have to be discussed. Rostock had no suspicion, any more than the other doctors present that there was any question of criminal actions.

In a later part of this statement, when dealing with the evidence, I shall explain exactly that nothing has been shown to prove a participation of Rostock in Gebhardt's experiments. It will be shown that he had no legal obligation to intervene, since his military and medical superiors were personally present at the same lecture.

Rostock continued to work as chief of his clinic, and it must be emphasized that this work became day by day more difficult, as the air raids on Berlin increased in 1943-44. Then, at the end of 1943, at the request of Karl Brandt, he attempts to establish a Department for Science and Research for the office of the Commissioner General for Medicine and Health. This opens the second field of indictment. At that time, it is true, the experiments under discussion here had for the most part already been ordered, begun, and carried out under various authorities. The Prosecution thinks, however, that the newly created office of Rostock now must have obtained knowledge of all these experiments, which were secret and which were carefully concealed from the public. What Rostock's motives were for the creation of the Department for Science and Research, he himself has convincingly explained in his examination. This uncontradicted testimony of his is of special importance in judging whether in view of the aims which he had chosen for his office, it had at all been possible for him to learn details of the research then going on. This was not within the sphere of duties of his office, nor was it possible from the point of view of personnel or time. Of special importance here are his statements about the background of the Department for Science and Research. The occasion for its establishment was defense against attacks on Germany's scientific research and doctrine by narrow-minded politicians. The resulting tasks were primarily in the direction of maintaining and expanding the facilities for research and teaching, without interfering in their details. Rostock's office began its practical activity only in February 1944. Anyone who knows conditions in Germany at that time can confirm what the evidence has clearly shown: that the attempt to coordinate and

regulate science and research which was undertaken in the last chaotic year of war bogged down shortly after it began.

The third field which the Prosecution has brought up also deals with a secondary office which Rostock undertook in this last war year, 1944. Karl Brandt formally appointed Rostock his deputy in the Praesidialrat (governing council) of the Reich Research Council. The picture given by the evidence must again be examined to determine whether Rostock, from this subsidiary office, gained knowledge of criminal experiments and thus at least became an accomplice of some experiments to be judged here. No document or witness was presented to prove that Rostock took any direct part in experiments through the office of the Reich Research Council, any more than in the other fields of indictment.

The Prosecution connects Rostock with the other defendants quite generally because of his position on the German health service. Here again, in the light of the evidence, we must examine whether there actually was any such connection.

I. The individual experiments with which Rostock is connected
by the Prosecution.

1. Malaria Experiments.

I shall refer to them in the closing brief.

2. Lost Experiments

(page 10 of the original

At the beginning Rudolf Brandt had stated in his affidavit (No 372) that Rostock had had knowledge of these experiments. This statement he retracted in his affidavit Exh. Rostock Nr. 8, as well as in his numerous answers during his cross-examination. The research assignments to Prof. Hirt originate with the Reich Research Council. It should be noted that they were issued before October 1943, at a time, therefore when Rostock had not yet been appointed deputy for the members of the Praesidialrat (governing council) of the Reich Research Council Karl Brandt.

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How far Rostock's knowledge - based on the assignment register of which he was in charge - of Hirt's research assignment work has been clarified in detail; namely, merely the fact that Hirt was working on the lost problem but not the way in which he did it. During the cross-examination by Mr. McHaney document No 692, Pros. Exh. 457 was shown to Rostock. It contains a list, compiled by Rostock's staff on 14 Sept 1944, in which of 690 items 45 research assignments are marked as regarded essential for the war effort under the then prevailing war conditions. This Document also contains, among the assignments going to Strassburg, the assignment to Hagen, Rickenbach and Hirt. Before as well as after submission of this Document Rostock testified to the same effect namely, that he had received knowledge of these assignments according to the list but that he did not know that they were in any way connected with human experiments. This was also proved by the statement by Karlstetter as well as through the affidavits by Hagenmann and Zettel.

(page 12 of the original)

That Rostock neither knew nor had to know the details of these experiments becomes equally evident from the fact that the whole field of combatting Chemical Warfare Agents was not within the sphere of activities of the Office for Science and Research of which Rostock was the chief but came under the direct competence of the General Commissariat himself. This was clearly stated during the examination of Karl Brandt, when Brandt stated that his collaborators in this particular field were officials of the Speer Ministry, the Armament Testing Office (Waffengruerungsamt), and those gentlemen responsible for air raid precautions, and that Rostock and his office were not informed about these matters. This was furthermore proved by the affidavit by Hagen, also by testimonies of the witnesses Christensen and Karlstetter who stated that there was no correspondence about matters

of Chemical Warfare Agents. This was again explicitly certified by Dr. Christensen when - during the cross-examination by Mr. Hardy - he was asked about a possible correspondence with Prof. Hirt.

This is also valid as regards to the documents NO 1852 which were shown to Rostock during the cross-examination by Mr. McHargy. Here it is a matter of reports about Phosgene experiments which are addressed to Karl Brandt. These reports are not addressed to Rostock as he stated in his testimony during the cross-examination. Merely the fact that Rostock's office was situated next door to that of Brandt does not prove - as the prosecution implies - that he should have read all letters addressed to Brandt, even if he was not competent in the subject the letters dealt with. Every impartial judge must admit that this conclusion seems a little far fetched.

As, in spite of this the prosecution, during the cross-examination, have submitted these documents about questions of Chemical Warfare Agents to the defendants Rostock, it has to be stated that simply none of these documents contains an ever so tiny allusion to Rostock and his Office for Science and Research. None of the documents could change the impression, which Rostock made and which is: that he testified honestly and correctly before the Tribunal.

I shall come back to the Lost experiments in my closing brief.

From these statements it becomes evident that Rostock had nothing to do with the Lost experiments on human beings, under discussion, and that he did not even know anything about them.

3. Sulfonamid Experiments

The prosecution did not contend that Rostock collaborated in these experiments. On the other hand, Mr. McHansy said on 21 February, 1947, that he, Rostock, "knew, or was supposed to know about them." If by this is meant that Rostock was informed about these experiments together with more than 100 other prominent doctors, including his then military and medical chiefs, through a lecture by Gebhardt and Fischer, at the third congress of consulting physicians from 24 to 26 May 1943, which has been dealt with in detail here, then this must be admitted. But no punishable act can be seen in this alone.

If, on the other hand, the prosecution believes that Rostock knew about this lecture and the experiments carried out by Grawitz or Gebhardt which were the bases of his lecture beforehand, they are mistaken. The error is based on a statement by Gebhardt who during a pre trial-examination said that the lecture including reference material had been submitted to the medical authority who was in charge of preparations for the congress. Gebhardt had then assumed that this was Rostock, as he was the chairman of the special professional section surgery.

But evidence has proved that it was an executive staff consisting

of medical officers of the Army Medical Inspectorate headed by the Chief Medical Officer (Generalarzt Schreiber) who was in charge of these preparations. Rostock was not a member of this committee. Therefore the previous information went to Schreiber and not to Rostock as was certified by Gebhardt in his examination. It is therefore proved that Rostock found out about these experiments for the first time on 24 May 1943 through this lecture of Gebhardt and Fischer; the experiments had been concluded when the lecture was delivered, otherwise the result could not have been reported about.

Through testimonies by Rostock, Handloser, Gebhardt and Fischer it has been unanimously clarified that Gebhardt as an introduction to Fischer's lecture said that these experiments had been carried out on persons who had been sentenced to death according to orders and who then had been pardoned.

There was no reason, neither for Rostock nor for the rest of the audience to doubt the truth of these introductory statements. Also, it was not within his competence to investigate details as to nationality, sex or legal reason and justification of sentence. It could be assumed that the persons sentenced to death had voluntarily applied to be used for experiments in order to evade death punishment, as has been stated by Rostock when he was asked about his impressions of Gebhardt's introductory remarks. All testimonies here prove unanimously that no information had ever been received to the effect that Polish women had been the experimental subjects.

Evidence has proved that Mr. McHaney's statements during the prosecution's case to the effect that the participants of the congress had "not only received information as to what was happening" but that they "had knowledge of what went on in the concentration camps" and that they knew the reports even before the time they were read are incorrect. Listening to a lecture is by no means identical with the participation in experiments which are the subject of the lecture.

There would also have to be some act of participation. This could perhaps consist of omission, if the listeners had a legal duty to act. Disregarding the fact that Rostock had no reason to doubt the accuracy of Gebhardt's statements, what could Rostock have done at the moment of Gebhardt's lecture by way of protest against the experiments, which were already completed? His immediate and supreme military and medical superiors were personally present at the lecture, and for that reason no reports to them were necessary.

The Prosecution itself, through Mr. Hardy, on 3 April 1947 acknowledged that it was necessary for experiments on human beings to be carried out. They said that in themselves they were not criminal. The indictment had been served not because of the human experiments themselves, but because of the criminal manner of execution of the experiments.

The necessary conclusion from this is that the knowledge of experiments on human beings alone is not punishable. As far as the Sulfonamide experiments are concerned, Rostock merely learned a little about the experiments that had been finished. He did not learn, however, that they had been carried out in a criminal manner, for example on non-volunteers. For he had to assume that the persons condemned to death had voluntarily accepted the chance for pardon, which was offered them. The Prosecution expert, Professor Ivy, expressly stated that one can hold the view that persons condemned to death can volunteer for medical experiments. In their final plea on 14 July, the prosecution stated through Mr. McNaney, that the views of Mr. Ivy were not only the views of an individual, but the views of the United States. Thus there is no charge against Rostock, according to the evidence, in the sulfonamide matter. Individual details will come up in my closing briefs.

5. Experiments for making sea-water drinkable.

These experiments were carried out at a time when Rostock was the Chief of the Office for Science and Research with the General

Commissioner for Medical and Health. As shown on the Chart Exh.... Prosecution might have seen an incrimination of Rostock in the fact that Schroeder stated in his Affidavit NO 449 that Rostock had knowledge about research being carried out by the Luftwaffe. The evidence has proved, however, that Rostock or his office did not participate in the preliminary conferences to these experiments, because the list of participants and the minutes of these conferences were presented as document No 177. Schroeder in his affidavit, Exh Rostock 10, affirmed that Rostock in no way instigated or ordered these seawater experiments.

The research assignments distributed by the Medical Chief of the Luftwaffe in 1944 were reported to Rostock's office, and it might be concluded from this fact that Rostock therefore got knowledge of the experiments.

Becker-Freysang in his cross-examination through Mr. Hardy had started that the Medical Inspector of the Luftwaffe certainly did not send any report on the seawater experiments to Rostock and that he was quite sure that Rostock had not been present at the final conference in the anti aircraft shelter in the Berlin Zoo, when Weiglboeck made his report on the development and the result of the experiments. Again I would like to draw the attention of the Tribunal to this in my closing brief.

All this evidence proves beyond any doubt that Rostock neither instigated nor ordered the seawater experiments, that he did not actively participate in them nor gave any advice and that he did not even know anything about them.

6. Experiments on epidemic jaundice.

A similar request for the execution of such experiments was put before the Tribunal in the form of a letter by Grawitz of 1 June 1943. At that time Rostock's office for Science and Research with the General Commissioner for Medical and Health Service did not yet exist. Rostock himself stated that he did not get any knowledge of that letter at that

time.

The Reich Research Council in 1943 gave a research assignment on hepatitis to Prof. Hagen. At that time Rostock did not yet belong to the Reich Research Council as a deputy of a member of the Praesidialrat (Governing Council).

The Prosecution probably bases the charges against Rostock on Rudolf Brandt's affidavit No. 374. This statement is contradicted by the same Rudolf Brandt, who in his affidavit, Rostock Exhibit 7 declares that he had no positive evidence for Rostock's knowledge of the experiments. In the re-direct examination through Dr. Vorwerk, Rudolf Brandt expressly withdrew his original affidavit made for the Prosecution. I don't consider it necessary to deal in particular with the probative value of Rudolf Brandt's incriminating evidence. Again I draw the attention to the Tribunal to the remarks in the closing brief.

Consequently, neither in field of sea water experiments did Rostock have any knowledge of the allegedly carried out human experiments and even less did he instigate, order or participate in them.

7. Typhus Experiments.

The evidence has proved that an institute for the production of typhus vaccines existed in the Buchenwald concentration camp under Dr. Ding and that typhus experiments were supposedly carried out by Dr. Ding in the Buchenwald concentration camp and by Prof. Hagen in the Mauthausen concentration camp. I will deal with each of these three points separately as to whether Rostock had any connections with them.

According to Mrugowsky's evidence the institute for production of typhus vaccines at Buchenwald produced these vaccines for the Waffen SS and the concentration camps. The office of Brandt and Rostock had nothing to do with the medical affairs of the SS.

Mrugowsky has described how the typhus experiments in Buchenwald came about. They were ordered directly by Himmler through Grawitz.

Rostock had in no way any thing to do with them, neither as an advisor nor as a participant. At the already mentioned third meeting of the Consulting Physicians on 24 - 26 May 1943 in the Hygiene Group Dr. Ding made a report on the results of the experiments. Rostock did not attend this conference, since he had to attend conferences on surgical matters that took place at the same time.

I now come to the typhus experiments of Haagen in Natzweiler. The Prosecution probably bases its charges as to Rostock's participation in these experiments mainly on the Affidavit of Haagen's secretary, Miss Eyer.

The Tribunal will recall that the witness, Eyer, a prosecution witness, during Mr. Hardy's examination, retracted her statement and said that she made a mistake and thought another Professor from Berlin, with the name of Zless, to be Professor Rostock.

The typhus research assignment which Haagen received from the Reich research council was given by Sauerbruch. It was given at a time, namely in 1943, when Rostock did not even belong to the Reich Research Council as a deputy of a member of the Praesidialrat.

A report of Haagen to the Reich research council was put in evidence as document No. 138. When reading it, Mr. MacHaney said that the document ascertained the fact that the top representatives of the Reich research council had full knowledge of Haagen's work and its criminal nature. With regard to "the criminal nature" at least Mr. MacHaney, de facto, withdrew his assertion, when during the cross-examination on 21 February, 1947, he said that he did not believe that Haagen reported on his experiments in the concentration camp to the Reich research council. Therefore, one would not really have to discuss this point of the indictment any longer. However, Rostock himself stated that it may have been possible for him to have read Haagen's report at that time in the printed reports of the Reich research council. He said, however, that he had noticed nothing special, when reading it.

Rostock has dealt with the matter and I wish to call the attention of the Tribunal to the details within the closing brief. The same is valid for the paragraph "Biological Warfare and Polygol".

III. Rostock's Activity in the Organization of the
German Health System.

Office for Science and Research

The creation and the activity of the Office for Medical Science and Research with the Commissioner General and later with the Reich Commissioner for the Medical and Health System must be discussed more in detail. First of all, the chart, Exhibit Rostock No. 1, illustrates the fact that Rostock prepared himself for the position only from autumn 1943 and was not actively engaged in his job before the middle of February 1944 and then only as a secondary position besides his regular duties. Service in this position demanded only thirty percent of his working time.

In the opening statement, General Taylor said that the Reich Commissioner for the Medical and Health System was to be regarded as the highest Reich authority. The emphasis on this word is confusing and contradicts the authentic document NO-82, which states, "In this capacity his agency is highest Reich authority." In this decree, then, the word "the" is missing. But this is most essential. For the decree signifies that it is one of many "highest Reich authorities", whereas the type of expression chosen by General Taylor must lead one to conclude that it was the only "highest Reich authority" in the Department of Health. But, as evidence has shown, this was not true.

Without a doubt, the prosecution has gained the wrong impression of the extent, actual activity, and influence which the Office for Science and Research had on other agencies. Rostock has dealt with this question in detail during direct examination. The Tribunal will certainly still have a recollection of his statements. Rostock actually had no supervisory authority over research work of the branches of the Wehrmacht and the SS.

Brandt's, and thus also Rostock's, commission comprised not all medical affairs, but only special tasks as was testified quite clearly here by the witness Lammers. The assignment given to Rostock did not include supervision of practical research.

The relationship of Rostock's agency to the SS must be discussed briefly, for all experiments which play a part in these proceedings were, after all, carried out in concentration camps which came under the jurisdiction of the SS. Rostock himself was never a member of the SS. He also had, apart from that, no other relations of any kind with the SS. When the agency of the Commissioner General for the Medical and Health System was ordered, Hitler, in the presence of Himmler, made it quite clear to Karl Brandt that in his (Karl Brandt's) capacity of Commissioner General the SS was not his affair. The practical execution of this directive has been expressly confirmed by Gensken. Furthermore, the decree of 26 August 1944, which lists the agencies to which the Reich Commissioner for the Medical and Health System could give directives, does not mention the SS.

Gebhardt has testified on 3 May that Grawitz was never subordinate to Karl Brandt and that Brandt never even had the right to give directives to Grawitz. He testified further that Himmler wanted to create a "Science exclusively for the SS" and that university people had resisted that attempt. However, Rostock must quite definitely be considered an exponent of university scientists. The proof for the correctness of Himmler's intention with a "science exclusively for the SS" can be seen from a letter which SS Gruppenfuhrer Berger wrote to the Reichsfuhrer SS on 22 September 1942.

This should furnish sufficient proof that Rostock had no influence on research activity within the SS or the concentration camps. It has already been pointed out, when the individual experiments were discussed, that he did not even have any knowledge of them.

In regard to research commission assignments to the Medical Chiefs of the Luftwaffe, Schroeder had asserted that all research assignments

had to come through Rostock's office. Schroeder has testified in his affidavit, Exhibit EO No. 10, that this was an erroneous description. For it had only been agreed that a carbon copy of the research commission which had been assigned would be sent to Rostock. His approval for the assignment of the commissions was by no means required.

Reich Research Council

And now I would like to turn to the complex of problems connected with the Reich Research Council. Here the prosecution has charged Rostock with responsibility because from the beginning of 1944 he was Brandt's deputy in his capacity as a member of the Presiding Council of this body. The fact itself shall not be denied, but the responsibility shall, mainly from a view of penal law as well as of morals. I deny the assertion of the prosecution, which has been summarized by Mr. McHaney on 10 December 1946, that Rostock exercised a "supervisory control" over the Reich Research Council, or, on the occasion of submitting a letter of Rascher about freezing experiments that "the Reich Research Council as a whole is implicated in a criminal manner".

The problem of the Reich Research Council has certainly been thrown light upon during the testimony of Karl Brandt, Rostock, Blome, Sievers, as well as by the affidavits of Mentzel, the chief of the Managing Committee of the Reich Research Council. As the crux in this connection emerges the fact that those responsible for the distribution of research assignments were, exclusively, the managers of the Special Sections and their authorized agents and subordinates, who, in turn, were directly subordinated to Hermann Goering. Rostock was not among them. The members of the Presiding Board had no supervisory duty over and no right to issue directives to the managers of the Special Sections.

Here again I would like to call the attention of the Tribunal to the closing brief:

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Conspiracy:

Even if the concept of "conspiracy" is rejected in principle, we must still discuss shortly here for the acts of which men and agencies

Rostock can be held responsible, i.e. for those which were subordinate to him and which he supervised.

He had no subordinates in his position as Consultant Surgeon to the Medical Inspector of the Army. He merely was the "consultant" of his Inspector and his staff. If this agency had ordered the commission of criminal deeds to which Rostock in some form had given his advice, then one might, perhaps, construe an accessory guilt of Rostock. But in none of the cases under discussion here the experiments were ordered by the Medical Inspector of the Army. In his position as Chief of the Office Science and Research with the General Commissioner for the Medical and Health Services Rostock had four medical assistants and three or four typists as subordinates for whose official activities he bears responsibility. None of these persons in any way, either directly or indirectly, participated in the experiments we discuss here. None of these experiments was ordered by this agency or even suggested. The peculiar manner of conducting these experiments was unknown. It was known neither to Rostock nor to his assistants, as has been proven by the conforming testimony of all his assistants.

Rostock had no official supervisory duty over and no right to issue orders to the persons who ordered and conducted the experiments. The barriers which were constructed around the concentration camp were just as impenetrable and just as opaque for him and his assistants as they were for the great majority of the German people.

Also, nothing has been brought out by the submission of evidence which would permit to conclude the existence of a common plan as asserted by the prosecution, inasmuch as a definite, firmly outlined plan among a narrow circle of persons which always remains the same is understood by that expression. On the contrary, very frequently during the course of the proceedings we heard of the strong forces within the leading circles of Germany which strove to different goals, as testified by prosecution witnesses as well as by the defense. With reference to the leaders of the Medical Services let me only point to the differences between Conti

and Blome, to quote an instance. There is no need to go into the details of this. But considering this special case, let me emphasize the differences which have repeatedly been discussed during the submission of evidence - I mean those differences between Conti and Grawitz on the one hand, and Karl Brandt on the other hand. These, of course, had their effect on the subordinate agencies, too. I also want to point out the opposition of the SS to Karl Brandt's agency.

IV. Control Council Law No. 10

I do not intend to repeat the actual text. I only want to make a remark to the individual paragraph, Article II, 2a. I may add the following details with reference to the defendant Rostock:

a) The prosecution did not allege that Rostock can be regarded as a principal of one of the experiments II 6 A - L. The evidence also shows that Rostock never conducted one of the experiments discussed here.

b) Neither was he "an accessory to the commission of any such crime" nor did he "order or abet the same". In every individual case the evidence could show who gave the order to conduct the experiments. As far as they were assignments of the Reich Research Council, it was made clear by the testimony of the defendant himself as well as by Blome's and Sievers' testimony and the Mentzel affidavit that Rostock in his capacity as deputy of a member of the Presiding Board of this body had no influence on the distribution of the research assignments. In addition, they were all issued at a time when Rostock did not yet belong to the Reich Research Council.

Rostock did not "take a consenting part in" one of the experiments. As discussed at great length in the first part of my closing speech, he didn't even have knowledge thereof. Of the sulfonamide experiments he, and numerous other physicians, became aware for the first time by the lecture of Gebhardt and Fischer at the meeting of the Military Medical Academy on 31 May 1943, and this was only after the experiments had already been concluded. Not even interpreting this extensively one can judge this as "taking a consenting part therein". Moreover, there would

be no room for such an interpretation, since a criminal character of the experiments was not recognizable for Rostock.

d) In no single case was Rostock "connected with plans and enterprises", as I have already set forth in detail.

e) All the experiments were conducted in concentration camps. These were under the jurisdiction of the SS. Rostock never was a member of the SS nor did he maintain official contacts with them. Therefore, Rostock never "was a member of any organization or group connected with the commission of any such crime".

Summing up, we arrive at the conclusion that not one of the facts which Art. II, 2, A - E of Control Council Law No. 10 demands in order to deem a person guilty of having committed a war crime or a crime against humanity applies with reference to Rostock.

Relying on testimony which has been refuted since then, the prosecution could assert again and again that Rostock by virtue of his position should have known of these events. This assertion was never proven by the prosecution. The findings of the trial judge must not, however, rely on a fiction, but only on factually proven events and acts.

Conclusions

Mr. President, Your Honors:

If, at the conclusion of my examination of the evidence, I appeal once more to your sense of justice. I do not do so because I doubt the positive result of the presentation of evidence. I shall therefore expressly and consciously not refer to the saying: in dubio pro reo, because I am of the opinion that the presentation of evidence has brought absolute clarity in every respect in favor of Rostock's acquittal.

Nevertheless I should like to ask the High Tribunal to take into consideration certain minor external matters which may not be without serious consequences. From all your previous decisions we have been able to feel your efforts to be the utmost fair and just. It is therefore my conviction that this High Tribunal will adjust inequalities where it senses them.

It seems to me that for this Tribunal, which comes from a country with a parliamentary and democratic government, it is very difficult task to realize how here in Germany during the war the struggles for power of individual groups developed to a grotesque extent under the cloak of ostensible unity. Rostock rightly referred to this in his examination. Germany was ruled by a suspicious dictator, who was a master at playing one against another. The more desperate the situation became, the oftener he had recourse to the method of appointing more and more plenipotentiaries general, commissioners general, and similar titles. But at the same time he left the existing competencies entirely or in part untouched, so that a chaos of competencies developed. In this respect the international Nuremberg trial brought to light numerous examples. Brandt's appointment as commissioner general is to be evaluated in this sense. Beside him there remained the competencies of Vontz and the Chief of the Medical Service

of the Wehrmacht branches. Above all Hitler refrained from interfering in Himmler's or Grawitz' sphere. All too often in the Third Reich - as in this case - a high-sounding title concealed deliberate or accidental confusion of competencies. When Karl Brandt called on Rostock for assistance, he did not present him with a clearly defined program, because he himself had not received one. Thus Rostock, who came from the clear air of purely scientific medical work, could assume that he could do some good trying to maintain German medical science and its foundations over the period of the collapse. How difficult this decision was for him, which implied giving up other scientific work, Rostock has already convincingly described for us. After seeing the evidence, we can believe him and his associates when they say that he or they had no knowledge of the crimes previously committed in Germany in the field of practical research.

It was possible even to indict a man like Professor Rostock for conspiracy and the commission of war of war crimes and crimes against humanity only because the Prosecution did not consider or did not know the personality of Rostock and was not able to get a true picture of all the circumstances. Only very few people, who lived in Germany during the war, knew the conditions and the divisions of power, the struggles for power and the silent intrigues of those groups who had the whip in the hand, and the numerous iron curtains before agencies and institutions which all concealed and guarded their work jealously. How much more impossible was it for a foreigner, when the indictment was served, to judge correctly these confused conditions in Hitler Germany. Such a correct judgment would, however, be the prerequisite for an indictment properly founded from the factual and the legal point of view. I am of the opinion that the Prosecution faced a task which was difficult to perform.

While the Prosecution has, during this trial, submitted many

documents which testified to the contempt or the indifference of the authors to the life and fate of other human beings, no documents have been submitted which show Rostock's work and thought. Since all archives and documents centers are exclusively in the hands of the American Prosecution authorities, the Defense is at a disadvantage here. The entire correspondence of Rostock's office has been confiscated by the Americans. I may at least point out at this point that if there were any document there which throw even the slightest shadow on Rostock's character, it would have been presented here. Thus I can state: There is no such document from the hand of Rostock. The simple reason for this is that Rostock simply had no knowledge of any crimes nor did he participate in them in any way. If the Defense, were able to present Rostock's files and letters from that time to the Tribunal, we would find therein many statements by Rostock which would show his ideal efforts in the service of his science and his patients. It would become obvious that Rostock in conduct and character was one of us who believe in the progress of humanity through kindness, mutual respect, and tolerance.

Only the detailed presentation of evidence in this trial has brought clarity. As I have explained, it has shown the complete innocence of the Defendant Professor Rostock. The unjustified indictment means for him the most serious defamation in his position in society and in science.

I should here like to call the attention of the Tribunal to one point in which view point and effect on the public in America and Germany differ. In contrast to the American procedure, in German criminal procedure a trial is opened for such crimes as are under indictment here only when the prosecution material has already been examined by a court officer. This is the institution of the so-called examining judge, who, in major cases, decides when a court trial is to be opened. For all crimes there is also a judicial examination of the prosecution material before the court trial opens, and only when there

are strong grounds for suspicion is the trial opened for judicial decision. This procedure brings it about that the public can assume in such trials that the indictment is, with a high degree of possibility, based on fact. This means that for a man who has once been involved in such a trial it is later extremely difficult to find honor and respect among his fellow citizens. The defendant Rostock would therefore be grateful to you, Your Honors, if in the formulation of your judgment you could help to make it possible for him to resume his place in the circle of respected persons.

With the pride of a clear conscience and with confidence Rostock awaits the judgment of this Tribunal. According to the results of the presentation of evidence, I am convinced that it is my duty to ask that Professor Paul Rostock be fully acquitted.

THE PRESIDENT: Before proceeding with further argument the Tribunal will be in recess.

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal understands that the translation of Dr. Seidl's argument, as attorney for defendants Gebhardt, Fischer and Oberhauser, are all prepared. The Tribunal will now hear from Dr. Seidl as attorney for the defendants named.

DR. SEIDL: Dr. Seidl, attorney for the defendants Gebhardt, Oberhauser, and Fischer.

Mr. President, your Honor, if I may draw your attention to the index of the final plea for the defendant Gebhardt, you will find that there are 31 points. The first three points deal with the count of Indictment I, which is common plan or conspiracy. As the Tribunal has already arrived at a decision as to these parts, I will not deal with this part of my plea, and shall come straight to this point.

I would like to draw the attention of the Tribunal to pages 11 to 16 because I have examined there the factual and legal effect of a document, which is Prosecution Exhibit 460. It is the order of Himmler, 15 May 1944, under which a special assignment was given to the defendant Karl Gebhardt within the Medical Service of the Waffen-SS.

I now turn to point four which begins on page 26.

(4) WAR CRIMES AND CRIMES AGAINST HUMANITY

COUNTS II AND III.

In the Indictment the medical experiments carried out for the benefit of the German Wehrmacht represent an independent group that has nothing to do with the other actions forming the subject of the indictment. The defendant Karl Gebhardt is charged with being especially responsible for these experiments and with participating in them.

The hearing of the evidence has proved that the defendant Gebhardt evidently had nothing at all to do with some of these experiments. With regard to other experiments, the Prosecution submitted some documents which do not let us discern any immediate participation of the defendant Gebhardt in these experiments, but which show that he learned of them after they had been carried out.

The focal point of the indictment and evidence, in so far as they concern the defendant Behardt, are the experiments which were carried out in the concentration camp Ravensbruck in 1942 and the aim of which was to determine the effect of the so-called sulfonamides in connection with wound infections.

The Sulfonamide Experiments (Count II of Indictment, Art. 6 Section E and Count III of Indictment, Art. 11.

First of all, I wish to remark here that the assertion of the prosecution, that this state of affairs had played a part in the Hamburg trials against Solidanski and Froitzhi is essentially incorrect. The accusations which were made in these proceedings against the defendants have nothing essential to do with the subject of this trial.

For all medical experiments forming the subject of the indictment, the experiments for testing sulfonamides were undoubtedly the most directly connected with the war. The problem of wound infection in every war and especially in modern warfare, is one with which every nation at war must concern itself. This problem is not only one of great importance to the life and health of the individual wounded soldier but it may have a decision effect on the strategical position and on the outcome of the war itself through the resultant gaps in the ranks. Already the first world war has shown that the majority of soldiers do not die on the battlefield itself and that in most cases death is not the direct result of a wound, but that the heavy losses must be attributed to infection of wounds received. These experiences have been confirmed in the second world war and the special conditions prevailing in Russia and the climatic conditions due to the winter there have shown even more than in the first world war that wound infection was a medical and tactical problem of the highest importance for the troops and their health. As regards details, I refer to statement made in this connection on the witness stand by several defendants in these proceedings in answer.

Consequently it could not come as a surprise that

in this war also efforts were made to deal with wound infections not only by using surgical measures, but that a way was sought to prevent the formation and the spreading of bacterial infections or at least to confirm them, within reasonable limits, by using chemical preparations.

Such efforts seemed the more called for as the war in the East not only meant an immense strain for the resources in material and personnel in general, but also in view of the fact that especially the supply of the army troops and the Waffen SS with medical officers and, above all, with trained field surgeons became more and more difficult. Had it been possible to assist the field medical officers at the front and at the main dressing stations, with a reliable and effective chemo-therapeutic preparation against bacterial wound infection, a progress of vast importance would have been achieved.

On the other hand, however, it could not be overlooked that the introduction of a not safely operating chemo-therapeutic preparation involved a certain amount of danger for an effective medical care of the wounded and consequently for the war potential of the German Wehrmacht and its striking power. In his lecture on the chemo-therapy of wound infection as delivered before the first conference East of the consulting specialists on 18 May 1943 and which I submitted as part of the report dealing with this conference, i.e., as Exhibit Gebhardt No. 6, Professor Dr. Rostock referred to the great danger of chemo-therapy, i.e. the possibility "to induce neglectful physicians to be careless in the surgical execution of the wound dressing, since they may place a certain trust in chemo-therapy".

This warning was all the more in order since, at that time, not only a complete uncertainty existed as regards the effects of sulfonamide, but also because there was a divergence in the opinions as the efficacy of this preparation. It has been clearly shown by the evidence that, in spite of close observation of the effects of sulfonamide in peace times and in war, it was impossible to answer this question. The opinions were very much divided. While some were convinced of the efficacy of these preparations

in connection with wounds infections and ascribed extraordinarily good results to them, others were of the opinion that these chemical preparations could at the best be used supplementary and that they, if used by themselves, did not have the properties to prevent bacterial infections resulting from combat wounds. With regard to the details I refer to the statements of the defendants Karl Brandt, Handloser, Rostock, Gebhardt and Fischer and to the Exhibits Gebhardt, Nos. 6, 7 and 10 as submitted by me during the hearing of the evidence.

In this respect, it is highly interesting to review the scientific discussions of the consulting specialists as contained in the report on the first conference held on 18 and 19 May 1943. These discussions which took place prior to the sulfonamide experiments comprising the subject of the indictment give a true picture of the situation as it was at that time with regard to the efficacy of sulfonamides.

In this respect we are able to distinguish three sharply defined groups. In the group, which rejected the chemo-therapeutic treatment of wound infection, Geheimrat Professor Sauerbruch was leading. He emphatically voiced the opinion that these chemical preparations tend to obscure the surgical work and to lead to perfunctory treatment. He demanded that the preparations should be critically tested, that is to say, the test should be made by surgeons experienced in general surgery.

In the other camp there were surgeons who claimed to have obtained extra-ordinarily favorable results in the chemo-therapeutical treatment of bacterially infected wounds. Among them was D. Krueger, the Berlin professor for surgery, who claims to have observed a favorable effect of sulfonamide in as many as 5000 cases.

To the third group finally, belonged the surgeons, bacteriologists and pathologists who took the view that nothing definite could be said as yet as to the effects and the efficacy of sulfonamides as agents in the fight against bacterially infected wounds and that further tests along these lines would have to be made.

Thus it can be said that after the experiences of the Russian winter

campaign of 1941/1942, the fight against the bacterial wound infection and the question of the efficacy of the sulfonamides had become a military-medical and medical-tactical problem of first importance about which opinions differed widely. A solution of this problem was the more urgent as an answer had to be found quickly, and on the other hand the fact was not to be disregarded that the experiences gained during nearly ten years of peace and war in clinics as well as in laboratories were insufficient to answer this question.

(6) The Order for the Execution of these Experiments.

The evidence has shown that the order to ascertain the effectiveness of the sulfonamides in experiments on human beings, was given directly by the Head of the State and Supreme Commander of the Wehrmacht. Hitler's order was not submitted at first by Himmler to the defendant Gebhardt, but to Dr. Grawitz, Reich physician of the SS and Police.

However, the evidence showed further that another circumstance arose which at least from the point of view of time caused the order for these experiments to be given, viz. the death of the chief of the Reich Main Security Office General of the Waffen SS Reinhardt Heydrich, who in May 1942 was assassinated in Prague. As to the details I refer to the statements made by Gebhardt in the witness box concerning this matter. Heydrich's death is connected with the experiments themselves only insofar as, at that time, the reproach was made, that Heydrich's life could have been saved, if sulfonamide and especially a certain sulfonamide preparation had been administered to the wounded men in sufficient quantities. The whole problem of sulfonamide therapy came to the foreground once more in this one case and that in such an obvious manner that the Head of the State himself gave the order to clarify by way of all-out experiments the question, which for a long time already had been of general importance for the fighting troops at the front.

Within the scope of this evaluation of evidence it is irrelevant to enter into the details, which brought it about that the experiments were carried out by the defendant Gebhardt himself. Against the strict order

of the Reich physician SS Grawitz, Gebhardt carried out the experiments not by artificially producing bullet wounds but by causing an infection under observation of all possible precautionary measures.

It was further shown by the evidence that the experiments were started with fifteen habitual criminals who had been sentenced to death and who had been transferred from the concentration camp Sachsenhausen to Ravensbrueck. In view of the fact, that this part of the experiment is not a subject of the indictment, it seems to be unnecessary to enter into this matter. It should, however, be kept in mind that at the conference on 1 June 1942, at which the conditions for the experiments were determined in detail - the defendant Gebhardt has described this conference in detail and I am referring to this - it was understood that the experiments should be carried out with male habitual criminals, who had been sentenced to death and who were to be pardoned in case of survival.

(7) The Experimental Arrangements for the Sulfonamide Experiments.

It was shown by the evidence that the experiments for testing the effectiveness of the sulfonamides were carried out in three groups. The first group included fifteen men. This group has nothing to do with the subject of the indictment and it is therefore superfluous to enter into this matter more closely.

The second group included thirty-six female prisoners, who had been members of the Polish resistance movement and who, for this reason, had been sentenced to death by the German Court Martial in the Government General. This second group was sub-divided into 3 sub-groups of 12 experimental persons each. As to the particulars of the provisions for the experiments, I refer to the statements made by the defendants Gebhardt and Fischer in the witness box. Contrary to the first group, contact substances were used in this second group to accelerate the process of infection. The contact substances were inserted into the open wound together with the germs. Sterile and pulverized glass and sterile wood particles were used for contact substances. These contact substances took the place of earth and uniform particles and had the purpose of producing war-like conditions for the wounds, without, however, producing at the same time, the general

dangers created by infection of the wound by earth and parts of clothing.

As in the case of the first group, staphylococci, streptococci, a gas gangrene bacilli, were used as agents. But the contention set forth in the indictment that tetanus germs were also used, is incorrect. On the contrary, the evidence has proved that the treatment of tetanus did not come within the scope of these experiments. There was less reason for this as it was realized long ago by German military surgery that the sulfonamide preparations are not suitable for the effective prevention of traumatic tetanus. Here I refer to the directives for the chemo-therapeutical treatment of wound infection which were issued at the First Working Congress East of the Consulting Specialists in May 1943 (Gebhardt Exhibit No. 5) - that is; prior to the performance of the sulfonamide experiments consulting the subject of this indictment. In these directives it is expressly pointed out that the outbreak of traumatic tetanus cannot be prevented by means of the sulfonamides and that tetanus anti-toxin has to be administered as usual.

In the course of the evidence only the witness Dr. Maczka has maintained that tetanus was actually used in one individual case. This witness did not make her own observations of the case, but has drawn conclusions based exclusively on the pathological picture demonstrated by one of the experimental subjects according to her statements. In view of the fact that even according to the testimony of this witness tetanus bacilli were employed only in one individual case, the assertion of this witness can hardly be taken as a true representation of the facts, for if it had really been the intention of the defendant Gebhardt to determine the effect of sulfonamides also on tetanus, one experimental subject would certainly not have been sufficient, and more experiments would have been necessary before a final decision regarding this question could possibly have been made.

The third group consisted of twenty-four experimental subjects who were not treated with any sort of contagion - unlike the procedure applied to the second group - but only had part of the muscle ligated. The

defendants Gebhardt and Fischer have given detailed evidence regarding these new experiment arrangements, how they originated, which consideration had to be regarded and what part was played by SS Reich Physician Dr. Grawitz. With regard to these details I refer to the statements made by the defendants in the witness-box.

The experimental subjects were treated with sulfonamide in the way described by the defendants in the witness-box. A few persons were not treated with sulfonamides but were used as control subjects. But that did not mean that these persons were not treated at all. As the evidence has proved, all experimental subjects were treated, namely by surgical measures if the sulfonamides did not prove effective against the inflammation. For this reason also the experimental subjects to whom no sulfonamides were applied, and with whom the inflammation did not pass away of itself, were given direct surgical treatment under observance of the generally recognized principles of surgery particularly as developed in Germany by Gebhardt's teacher Professor Dr. Lexer. This direct surgical treatment resulted in the scars, which the court has seen on the experimental subjects questioned as witnesses. As explained by Professor Dr. Alexander, the expert produced by the prosecution, these scars are the result not of the bacteriological infection but of the operations performed in order to eliminate this infection. For the case of the prosecution four experimental subjects have been called to give evidence. In addition, the prosecution has submitted in Document Book No. 10 a series of affidavits given by other persons used as experimental subjects. The statements of the four witnesses questioned in court coincide largely with the testimony given by the defendants Gebhardt, Oberhumer, and Fischer themselves in the witness-box. For this reason alone, it appears expedient and sufficient for the pronouncement of a just sentence and for the establishment of the true facts to base the sentence exclusively on the testimony of these four witnesses together with the statements of the defendants themselves. This is not only in accordance with the principle

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of direct and oral proceedings in court prevailing in any modern criminal
procedure.

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and which should not be departed from without urgent reason, but also such handling of the case seems suitable because the statements of the four witnesses are identical essentially so that they themselves, together with the statements given by the defendants, can be regarded as a safe basis for a finding - apart from one point which I shall go into later. Add to this that the affidavits submitted by the Prosecution not only differ in essential points from the statements made by the witnesses in court, but they are inconsistent and contradictory in themselves as well. This is represented, above all, by the fact that in several of these affidavits quite obviously contentions were made which are not based on personal and factual observation, but have become known to these witnesses by hearsay. The affidavits, moreover, fail to represent the circumstance in clear c h r o n o l o g i c a l order, which makes the whole matter the more doubtful as it was proved through the taking of evidence that in the Ravensbrueck Camp obviously experiments were also performed by other physicians with whom the defendant of this trial had no connection.

Considerable doubts also exist regarding the statements made by the witness Dr. Maczka. The Prosecution has submitted two affidavits given by this witness as part of its documentary book 10. When questioned in court, this witness could not maintain the contentions which appeared in the two affidavits as most incriminating. Under these circumstances, it has to be considered whether the court regards the statements of this witness as sufficient to be drawn into the determining of the judgment. I want to answer this question in the negative, and finally not only because she had to revoke the most essential points of her previous affidavits, but because a large part of her testimony was based not on her own observations, but either on information obtained from other prisoners or also on conclusions drawn by her.

THE PRESIDENT: Counsel, I call your attention to the fact that while you as the representative of three defendants have three hours to present the arguments for the three defendants, you have not three hours for any one defendant, but only one hour for each of the defendants. It would be a little helpful if you would speak in a little lower tone counsel.

DR. SEIDL: Your Honor, as all three of the defendants are concerned with sulfenamide experiments, in the case of the defendant Gebhardt I have consolidated the fundamental questions and it will be possible for me then in the later speeches for the defendants Oberhauser and Fischer to base my statements on previous argument. I have furthermore, not read everything which was contained in my final speech but only parts.

THE PRESIDENT: Very well, counsel. You may proceed.

(8) The Legal Status of the Experimental Persons

In the second and third group, inmates of the Ravensbrueck Concentration Camp who had been sentenced to death by German Courts Martial in the Governments General as members of the Polish resistance movement were employed as experimental persons. The witnesses questioned in court and all experimental persons from whom the prosecution has submitted affidavits, have openly professed their membership of the resistance movement, to which has to be added that some of them exercised relatively important functions in the resistance movement. If the legal status of the experimental persons at the time of their activity in the resistance movement is examined, the result will be as follows:

THE FORMER POLISH STATE

The former Polish State ceased to exist at the latest on 28 September 1939 as an independent subject from the point of view of International Law. After the entire area of the former Polish State had been occupied by the German armies and the troops of the Soviet Union and the

Polish Government had gone over into Romanian territory under pressure of the invasion of the Red Army on 17 September 1939, the two occupation powers decided to carry out a plan previously agreed upon, which was to settle all matters concerning the territory of the former Polish State without interference of any other powers. This was brought about by the German-Soviet Boundary and Friendship Pact of 28 September 1939, which I have presented as Exhibit Gebhardt No. 13. As to particulars, I refer to the contents of the pact. It was on this day, at the very latest, that Poland ceased to exist as a sovereign state and as bearer of rights and duties. Due to war, the former Polish State ceased to exist as a state and therewith as a subject from the point of view of International Law.

The territory of the former Polish State, insofar as it fell within the sphere of Soviet interests, became part of the USSR, to which it still belongs today.

The Polish territory which fell into the German sphere of interests and which is designated in detail in the Supplementary Protocol to the German-Soviet Boundary and Friendship Pact, became either part of the German Reich or - and this concerned the larger part of the area - was made into an independent borderland of the German Reich under the designation Government General. The constitutional laws governing this territory were based on the decree issued on 12 October 1939 by the Fuehrer and Reich Chancellor for the administration of the occupied Polish territory. I have presented the decree to the Court as Exhibit Gebhardt No. 14. In Article 4 of this decree it is stated that Polish Law was to continue to be valid insofar as it was not at variance with the taking over of the administration by the German Reich. Article 5 gives the Governor General the right to issue laws by ordinance for the territory under his administration.

Corresponding to the generally acknowledged principles of international law the ordinances issued by the Governor General were binding for the population of this territory. This is especially true of the ordinance for combating deeds of violence in the Government General, which was issued on 31 October 1939 (Ordinance Gazette for the Government General, page 10), and which also laid the foundation for the competence of the courts-martial. This ordinance had become necessary because the Military Government which had been active until 26 October 1939 ceased to exist when the Fuehrer decree of 12 October 1939 became valid.

In this connection, the following must be replied to the objection of the Prosecution in their final plea on the morning of the 14th.

First: There did not exist a Polish Government at the time when these experimental subjects were active for the resistance movement in 1940 and 1941. The Polish Government had ceased to exist as an independent subject under international law. The Government in exile in London under General Sikorski and the government in Lublin were only later on recognized by the Western Allies.

Second: At the time when the experimental subjects in 1940 were active for the resistance movement no Polish army existed which was still active in battle.

Third: The Prosecution seems to try to express that this Military Tribunal should not primarily apply territorial penal law but the principle of the international law. For this very reason the Prosecution has pointed out that the jurisdiction and the judicial authority within the Government General were the consequence of an aggressive war and could, therefore, not be legally recognized. This concept does not apply. It has to be pointed out first that the principles of international law, which have the task of regulating legal issues during the war, do not differentiate

te in any way as to whether it is an aggressive war or a defensive war or whether it was justified at all. That is said especially in the fourth Hague Convention of 1907, the so-called Hague Land Warfare Convention.

The objection of the Prosecution is not justified for another reason. The evidence before the IMT showed that the attack on Poland was carried out by Germany at least in the same manner as it was carried out from the USSR and that this becomes quite evident from the contents of the German-Soviet secret treaty of the 23 August 1939. Nevertheless the USA did not hesitate to recognize territorially the claims made by the USSR, in the area of the former Polish State. Now this recognition happened to take place *as well de facto as de jure* during the conference at Yalta in February 1945 and at the conference at Potsdam on the 2nd August 1945.

The Prosecution therefore today cannot object to this state of affairs as far as the legal issues from this attack are concerned.

The ordinance for combating acts of violence in the Government General and the introduction of the courts-martial connected with it would, by the way, have been permissible, even if the former Polish State had not ceased to be, through war, a subject in the realm of International Law. Military occupation of foreign States (*occupatio bellica*), too, gives the occupying power the right to take all the measures necessary for the maintaining of order and safety. It is a generally acknowledged legal conception that in this case the occupying power takes over the power of the conquered state, not as its deputy, but rather by authority of their own laws guaranteed by international law. This right is expressly acknowledged in the third section of the Hague Convention for Land Warfare. There can be no doubt that the introduction of courts-martial is one of these rights of the occupying power. In fact it seems unthinkable that an occupying power should not

be allowed to take measures for the effective fighting of a resistance movement, whose only and openly admitted purpose it was to undermine and destroy the authority of the occupying power and the safety of the occupation troops. The right to do this can even be less contested in our case. Since with the outbreak of the German-Soviet war, the territory of the former Government General became the largest military transit area, which has ever existed in the history of war. The methods by which the Polish resistance movement tried to attain its goals do not need to be examined here in detail. It is sufficient to point out that the resistance movement was in a position to interfere to a considerable degree with the reinforcements of the German Armies in

their fight against the Red Army, that this happened through the blasting of bridges, through transmission of important military information by any other ways imaginable. The Polish women who were used for the sulfonamide experiments were members of this resistance movement and they supported this movement wherever they could. However much we respect the courage and patriotism of these women, we cannot refrain from emphasizing the fact that they broke laws which at that time were binding for them and which gave the occupation power the right to impose adequate punishment upon them. It seems unthinkable that the members of a resistance movement such as the Polish one would not have been sentenced to death during the war for their activities in this movement by any other state which found itself in a position similar to that of Germany at that time. The newest developments show that the occupation powers which are now occupying Germany do not hesitate to impose, in similar cases, the most severe penalties.

For example, the American Military Government for Germany in its Ordinance No. 1, which was issued to insure the safety of the Allied armed forces and to re-establish public order in the territory occupied by them, lists, among others, the following acts as crimes punishable by death:

"(3) Transmission of information endangering the safety or property of the Allied Forces or neglecting to report immediately information possession of which is prohibited.

"(13) Disturbance of transport and communications or of the functioning of public utilities or supply services.

"(20) Any other offence against the laws and practices of war or any assistance to the enemy or endangering of the safety of the Allied Forces."

A comparison of these regulations with the contents of the court martial regulations of the Governor General for the Occupied Polish Territories, presented in Document Book II for the defendant Gebhardt, shows clearly that here generally the same facts were declared to be punishable

with the death sentence.

In order to exclude any doubts with regard to the legal status of the experimental subjects, it may finally be pointed out that the members of the Polish resistance movements, at least at the time during which the prisoners belonged to them, did not fulfill the conditions of Article I of the Hague Convention for Land Warfare of 1907 concerning militia and voluntary corps not affiliated with the army and having a certain military organization. The Polish resistance movement at that time 1) had no leader who was ostensibly at its head and was responsible for the conduct of the members; 2) it wore no particular badge recognizable from a distance; 3) it did not wear their arms openly and finally; 4) in its conduct of war it disregarded the laws and practices of war. In view of these facts the members of the resistance movement could not have been treated as prisoners of war even if at that time there had still been a Polish army at the front. In view of the fact that the prisoners in question were women serving in the communications and espionage branches of the resistance movement, this possibility was eliminated from the very beginning. Further objections raised by the prosecution regarding the legal status of these experimental persons I refer now to my trial brief.

(9) The Principles of Medical Ethics and the Applicable Law.

During the hearing of the evidence views were repeatedly given on the question of which principles of medical ethics are to be considered when performing experiments on human beings. In my opening statement before the evidence was submitted I have already pointed out in the case of these defendants that there is no reason to examine fundamental questions of medical ethics in these proceedings. Law and ethics are measured by different standards, which sometimes contradict each other. The same applies to the principles of general ethics as well as to those of a particular profession. An act offending the recognized principles of medical ethics does not necessarily constitute a crime. The unwritten regulations and convictions existing inside a profession cannot

be used as a basis for verdict, but only the cogent precepts of the law.

However, it cannot be concluded from this that the principles of medical ethics and their practical application were of no importance at all in these proceedings. These principles cannot, of course, be applied directly. At the same time there is no doubt that the principles of medical ethics and above all their practical application in recent decades can play an indirect part insofar as they have to be taken into consideration when interpreting the law. However, evidence has now proved that in recent decades and also even earlier, numerous experiments on humans were carried out, and, moreover, on persons who did not volunteer for such purpose. In this respect I refer to the statements of the expert Professor Dr. Leibbrandt, witness for the prosecution. I furthermore refer to the extensive evidence which the prosecution on their part exhibited in this question from which it appears that in numerous cases experiments were carried out on humans, of the nature and degree of danger of which they could not have been aware and to which they would never have agreed voluntarily. The only conclusion that can be drawn from these facts is that during recent decades views on this question have changed, in the same way as the relations between the individual and the community in general have changed. In this connection I need not give detailed reasons which led to this development. It is a fact that at least in Europe the state and the community have taken a different attitude toward the individual. However differently one may write about the change in these relations in detail, one thing is certain, however, namely, that the state has more and more taken possession of the individual and limited his personal freedom. Evidently that is one of the accompanying facts of technique and modern state mass. It must be added that the development of medicine in the course of the last decades has led to differentiated questions which can no longer be solved with the means of the laboratory and the animal experiments.

The evidence has shown that not only in Germany, and perhaps not even in the first place in this country, the reorganization of the

relationship between community and individual has resulted in new methods in the sphere of medical science. In nearly all countries experiments on humans have been made under conditions which entirely exclude volunteering in the sense of the law.

From this change of medical views, and above all, in the medical practice, immediate consequences for the interpretation of the law arise, since the law, according to its inner state, is universal and in the abstract and naturally does not answer the question as to the limits and under which assumptions experiments on humans are permissible and where the criminality of such an experiment starts. The real practice regarding this question has all the more importance for the interpretation of the law since almost every law and also the Control Council Law No. 10 contain standard rudiments of case facts, which means that in a particular case it can only be established by a judicial judgment. No special proof is needed that the answer to the question as to when and within which limits medical experiments are admissible calls for a judicial judgment, and that this cannot be established without taking practical experience into consideration, not only in Germany but also outside Germany. The standard rudiments of case facts are part of the legal facts and deal with illegality as characteristic of the punishable act. The real medical practice within and outside Germany, however, has not only to be considered when examining the question as to whether the actions constituting the subject of the indictment are illegal, but above all it is fundamentally important when answering the further question as to whether the actions constituting the subject of this procedure establish a criminal offense. Considering that criminal offense is not likely to be a permanent psychological fact but a standard computed fact in the sense of a personal reproach, the court will not also for this reason overlook the fact that particularly during the last years even outside Germany medical experiments were made on humans who undoubtedly did not volunteer for these experiments. The unity of law and the indivisibility of the idea taken as basis exclude judging one

and the same fact according to different legal principles and standards simultaneously.

To the question as to whether the defendants in the carrying out of the experiments which constitute the indictment have first of all been acting in their capacity as physicians or whether their conduct - if a just decision is to be rendered - must no longer be regarded from the viewpoint of war service as medically trained research workers, I shall give my opinion on at some later opportunity.

(10) The Agreement by the Experimental Persons as Legal Justification.

I shall now deal with the reasons for the exclusive of injustice and guilt, which according to the result of the evidence preclude the culpability of the defendant's deamen. I am hereby taking into consideration that the assumption of only one of the reasons for the exclusion of punishment which we shall now deal with suffices to justify the defendant's deamen and to exonerate him from the offense in the sense of a personal reproach because of his commission or omission. The individual reasons for the exclusion of culpability are discussed without taking into consideration whether the examination of any further similar reasons is superfluous, since the assumption of another reason for the exclusion of culpability suffices to secure the intended success. Evidence has proved that the experiments for testing sulfonamides were carried out, to begin with, on fifteen professional male criminals who had been sentenced to death. Had they survived the experiments, they would have been granted a pardon therefor. Considering that this part of the experiment is not a subject of the indictment, I need not go into detail about it.

Members of the Polish resistance movement belonged to the second and third group, who in view of their activity in this illegal movement had been sentenced to death by German courts martial.

It is a principle of German criminal law that in any case the consent of the offender precludes the illegality of the action. This principle is not only found in German law, but is an established part of practi-

cally all legal systems. Consequently, the question is to be examined whether the experimental persons have given their consent to the experiments. When examining the question whether legally effective consent had been given, it will not matter so much whether the experimental persons have expressly declared their consent. However, if generally acknowledged principles are applied, one may presume that they have expressed their consent in some obvious manner. It is clear that the consent could also have been given tacitly and by conclusive action.

However, it is true that all the female witnesses examined in court testified that they did not give their consent to the experiments. The Tribunal, in evaluating these facts, will have to take into consideration that these witnesses were in a special position at that time, as they also are today. It stands to reason that under these circumstances many things may appear different to them today from the way they actually happened five years ago. It might be true that the experimental subjects did not give their actual consent to these experiments. It might even be true that they were not asked before the experiments whether they consented to the experiments. Nevertheless this would not exclude the possibility that, considering their position at that time and being certain that they could not escape the execution in any other way, that they nevertheless did consent to the experiments, however quietly. This supposition would correspond with the fact that, for instance, none of the experimental subjects had ever made any complaint or mentioned to the defendant Fischer, who had regularly changed the dressings, that they did not consent to the experiments.

(11) The Presumed Consent of the Experimental Subjects as Legal Justification.

The illegality of an action is not only then excluded if the injured person agreed either actually or tacitly, but if there could have been a possible consent. These are the cases where the consent of the injured person could be expected normally, but where for some reason or another such a consent was actually not given. Numerous

attempts have been made in jurisprudence and also in jurisdiction to do justice to this situation which so often occurs in practice. Not all of these theories need have to be discussed since the decisive points of view have now been clarified. At first it was tried to settle this question by applying the law referring to unauthorized acting for and on behalf of a person. Serious objections were raised against this transmission of conceptions of civil law into criminal law. The criminal idea of consent is to be extended instead into the so-called supposed consent. I understand this as an objective judicial judgment based on probabilities, namely, that the person concerned would have given his consent to the action from his personal point of view if he would have fully known and realized the situation. Wherever such a judgment could be applied, it should have the same effect as the judicial finding of an actual consent.

However, other courts and scientists base their reason for justification upon "action for the benefit of the injured person". If correctly viewed no actual contradiction to an assumed consent would be seen therein. On the contrary one may say perhaps that this could be considered as an independent argument for justification.

In modern literature and jurisdiction the tendency prevails to combine the two last mentioned viewpoints by demanding them cumulatively. It is not comprehensible, however, why such simultaneous existence of two arguments for justification should be required, when each argument in itself is decisive.

A well-known teacher of criminal law in Germany stated the following conception of this idea: "Should the injured person not consent, the action in his behalf and for his benefit is to be considered lawful if his consent could have been expected according to an objective judgment. The primary justifying argument here is not that the injured person has waived his right of decision, but that a positive action was performed for his benefit.

The practical result, in spite of the theoretical objections raised against such a combination, could hardly be different. For the "objective judicial sentence based on probabilities, here applied for, which is decisive and upon which the so-called supposed consent would have to be based, will regularly result from an action that under given circumstances is performed for the "benefit of the injured person."

Applying these general principles to the sulfonamide experiments there can hardly be any doubt that the experimental subjects would have agreed if they had been fully aware of their position. The experimental subjects had already been sentenced to death and their participation in these experiments was the only possibility for them to avoid execution. If the Tribunal now tries to assess the probability that the experimental subjects would have agreed to submit to those experiments if they had had full knowledge of the position and the

certainty of their eventual execution there can be, according to my opinion, very little doubt as to the result of this examination.

Nor can there be two opinions regarding the question whether, under circumstances prevailing at that time, the utilization of the prisoners for these experiments was "in the interest of the wounded".

The evidence has shown that the other members of the Polish resistance movement, who were sentenced to death by court martial and who were in concentration camp in Ravensbrueck awaiting the confirmation of the verdict which was given by the Governor General of the occupied Polish district, (I shall refer to these experiments in my closing brief and I shall also refer in the reply to the closing brief of the prosecution) only after a complicated and protracted procedure — were really shot. Their participation in these medical experiments was the only chance for the condemned persons to save their lives. Their participation in these experiments was not only in their interest but it also seems to be inconceivable that the prisoners if they had been fully aware of their position and would have known of the forthcoming execution would not have given their consent for the experiments.

(12) The State Emergency and War Emergency as Legal Excuse.

The evidence proved furthermore that the experiments for the testing of the effectiveness of sulfonamide were necessary to clarify a question not only of decisive importance for the individual soldier and the troops at the front but that this was also a problem which did not only affect the care for the individual but was of vital importance for the fighting power of the army, and thus for the whole fighting nation. All efforts to clarify this question by studying the effect of casual wounds failed. Although drugs of the sulfonamide series — the number of which amounts to approximately 3000 — had been tested for more than 10 years, it was impossible to form an even approximately correct idea of the most valuable remedies. It was impossible to clarify this question in peace by observation of many thousands of people with casual wounds and by circularized inquiries. Nor could

a clear answer to this question of vital importance to many hundred thousand soldiers be found by observation of the wounded in field hospitals during the war. In consideration of the evidence it is impossible and also unnecessary to examine details of the problem of wound infection and its control in modern warfare. I may assume that the importance of this question is known to the court and need not be proved any further as this question did not only play a part in the German army but was a matter of special research and measures in the armies all over the world.

In 1942 these conditions in the German army and in the medical services of the Wehrmacht became intensified only insofar as with the beginning of the campaign against the Soviet Union new difficulties arose also with regard to this question. If in the campaigns against Poland and France it was possible to master the wound infections by the usual surgical means, the difficulties in the war against the USSR increased beyond all measures. It is unnecessary to examine the reasons for this more closely here. It is clear that they resulted from great distances and poor traffic conditions, but they were also caused by climatic conditions prevailing there.

The fighting power of the German army was affected by its severe casualties to an extent which made it impossible to allocate a correspondingly large number of experienced surgeons to the main dressing stations to control bacterial wound-infection by surgical measures.

During the hearing of the evidence the difficult situation in which the German armies found themselves in the winter 1941-42 on the front before Moscow and in the South around Rostow, was repeatedly stressed. Here it was demonstrated clearly that the German Wehrmacht and with it the German people were involved in a life and death struggle.

The leaders of the German Wehrmacht would have neglected their duty if they, confronted with these facts, had not made the attempt to decide, at any price, the question as to which chemical preparations were capable of preventing bacterial wound infection and, above all,

gas gangrene, and whether effective means could be found at all. "Whatever the answer to this question may have been, it had to be found as soon as possible in order to avert an imminent danger and to throw light on a question which was important to the individual wounded soldier as well as to the striking power of the whole army. After the failure of all attempts to solve the problem through clinical observation of incidental wounds and through other methods, and, in view of the particularly difficult situation and especially of the pressure of time, there was, nothing left but to decide the question through an experiment on human beings. The responsible leaders of the German Wehrmacht did not hesitate to draw the conclusions resulting from this situation, and the head of the German Reich who was at the same time Commander-in-Chief of the German Wehrmacht, gave the order to reach a final solution of this problem by way of a large scale experimentation.

Let us examine the legal conclusions to be drawn from this situation as it existed in 1942 for the German Wehrmacht and therefore for the German state — in particular regarding the assumption of an existing national emergency.

The problem of emergency and the particular case of self-defense has been regulated in almost all criminal codes in a way applicable only to individual cases. The individual is granted impunity under certain conditions when "acting in an emergency arising for himself or others individually". It is recognized, however, in the administration of justice and in legal literature that even the commonwealth, the "state" can find itself in an emergency, and that acts which are meant to and actually do contribute to overcome this emergency may be exempt from punishment.

1) First of all, the question has been raised whether the conception of self-defense, conceived to cover individual cases, can be extended to include also a state self-defense, meaning a self-defense for the benefit of the state and the commonwealth. The answer to this question has generally been in the affirmative. 2) The same reasoning, however,

as applied to self-defense is also applicable to the conception of emergency, as embodied e.g. in Section 54 of the German Penal Code and in almost all modern systems of criminal law. These provisions, too, are originally conceived to cover individual cases. But, using them as a starting point, the literature and the administration of justice arrive at a recognition in principle of a national emergency with a corresponding effect with regard to the definition of the concept of an emergency generally given in the penal laws, the application of these provisions to the state, while justified in itself, can be effected in principle only.

When the idea of an emergency is applied to the state and when the individual is authorized to commit acts for the purpose of eliminating such a national emergency, here as in the case of the ordinary emergency determined by individual conditions, the objective values must be estimated. The necessary consequences of conceding such actions on the part of the individual must be that not only is he absolved from guilt, but moreover his acts are "justified". In other words; the so-called national emergency, even though it is recognized only as an analogous application of the ordinary concept of emergency in criminal law, is a legal excuse. But what does "application" in principle to the cases of national emergency mean? Whether a national emergency is "unprovoked" or not, whether, for example, the war waged is a "war of aggression", can obviously be of no importance in this connection. The existence of the emergency only is decisive. The vital interests of the commonwealth and the state are substituted for the limitation of individual interests. Summarizing we can define the so-called national emergency as an emergency involving the vital interests of the state and the commonwealth, not to be eliminated in any other way. As far as such emergency authorizes action, not only may a legal excuse be assumed, but a true ground for justification exists.

How far an erroneously assumed national emergency (putative emergency) is possible and to be considered as a legal excuse, I shall

examine afterwards, which consequences arise from this legal position in the case of the defendant Karl Gebhardt?

1) As proved by the evidence the general situation in the different theatres of war in the year 1942 was such that it thought about an "actual", that means an immediately imminent danger to the vital interests of the state as the belligerent power and to the individuals affected by the war. The conditions on the Eastern front in the winter of 1941/42 as they have been described repeatedly during the evidence created a situation which endangered the existence of the state, through the dangerousness of the wound infection and the threat to the survival of the wounded and the combative force of the troops arising therefrom.

It must be added that the past World War II was fought not only with man and material but also by means of propaganda. In this connection I refer to the statements of the defendant Gebhardt in the witness stand, as far as they are connected with the information given to him by the Chief of Office V of the Reich Security Main Office, SS Gruppenfuehrer Nebe, which shows that just at that time the enemy tried to undermine the fighting spirit of the German troops by pamphlets describing as backward the organization and material of the medical service of the German Wehrmacht, while on the other hand praising certain remedies of the Allied Forces, as for instance penicillin, as "secret wonder weapons".

2) The assumption of a state of national emergency presupposes that the action forming the object of the indictment has been taken with the purpose of removing the danger. By this is meant the objective purpose of the action, not just the subjective purpose of the acting individual. It must be asked, therefore, whether the sulfonamide experiments were an objectively adequate means for averting the danger. This, however, does not mean that the preparations really were an adequate means by which to meet the danger expertly. According to the evidence there can be no doubt that these assumptions did really exist.

5) Finally, there must not be "any different way" in which national emergency could be eliminated. One must not misunderstand this requirement. Not every different way, which also, could have been pursued only by corresponding violations, excludes an appeal to national emergency. The requirement mentioned does not mean that the "way of salvation pursued must necessarily be the only one possible. Of course, if the different possibilities of salvation are evils of different degrees, only the lesser one is to be chosen. It must also be assumed that there should exist a certain proportion between the violation and the evil inherent in the danger. This viewpoint, however, does not present any difficulty in our case. In view of the fact that in the present case many tens of thousands of wounded persons were in danger of death.

According to the evidence there can be no doubt that a "better way" could not have been chosen. On the contrary, it has been shown that in peace as well as in war times everything was tried without success to clarify the problem of the efficacy of sulfonamides. The fact that for experimental subjects prisoners were chosen who had been sentenced to die and to be executed, and to whom the prospect of a pardon was held out and actually granted can here not be judged in a negative sense. This fact can not be used as an argument when examining the legal viewpoint, because participation in these experiments meant the only chance for the prisoners to escape imminent execution. In this connection I refer to the explanations I have already given in connection with the so-called likely agreement.

(13) Special Consideration of the War Emergency as Legal

Excuse.

Beside the general national emergency discussed in the literature of international law recognizes also a special war emergency. According to it: "in a state of self-defense and emergency even such actions are permitted which would be against the laws of warfare and therefore against international law." Different, however, from self-defense and emergency in the sense of international law is the "military necessity of war" (war-raison) which by itself never justifies the violation of the laws of warfare. War emergency and necessity of war however, are different concepts. The emergency due to which self-preservation and self-development of the threatened nation are at stake, justifies, according to general principles recognized by the national laws of all civilized countries, the violation of every international standard, ergo also of the legal principles of the laws of warfare. When applying the concepts of self-defense and emergency as recognized by criminal and international law, the illegality of violations committed is excluded if the nation found itself in a situation which by the application of other means could not be relieved.

In this connection the following must be pointed out:

I have already explained before that the experimental subjects on whom the sulfonamide experiments forming the object of this case were performed, came under German jurisdiction, even if one holds the opinion that in the case of Poland it was not a question of genuine "debellatio" but only of "ocupatio bellica". However, of whatever opinion one might be in regard to this question, there can be no doubt that assuming an international emergency

the performance of the experiments would have been justified even if at the time of the experiments they still had been citizens of enemy nations. For the regulating of the conditions of such persons according to international law, the "Order of laws and practices of land-warfare" is decisive which is attached to the Haag Convention of 18 October 1907 regarding the laws and practices of land-warfare. According to what has been said above, however, even a violation of such special conventions, as contained, for instance, in the special prohibitions of article 23, is justified at the time of a genuine war emergency. In view of the fact that the special conditions characterizing a real war-emergency are existent, the objection that citizens of another country should not have been used for the experiments, is invalid.

(14) The Evaluation of Conflicting Rights and Interests as Legal Excuse.

According to well-considered opinions, we must start on the premise that the defendants, both in principle and in procedure, are to be tried according to German criminal law. They lived under it during the time in question, and they were subject to it. For this reason I wish to approach one more viewpoint which should be considered independently and in addition to the legal excuses already mentioned, when judging the conduct of the defendants.

For many years the legal provisions for emergency cases have proved inadequate. Theory tried for a long time to fill the gaps with explanations of a general nature, and finally the Reich Supreme Court handed down basic decisions expressly recognizing an "extra legal emergency". The considerations, which they were based are known by the term "objective prin-

ciple of the evaluation of conflicting rights and interests". In the legal administration of the Reich Supreme Court and in further discussions this principle, to be sure, is combined with subjective considerations of courses of action taken by the perpetrator in the line of duty. Therefore it is necessary to discuss both considerations - that of evaluating conflicting rights and interests and that of compulsion by duty - together even if we must, and shall, keep them distinctly separated for the time being.

1.) The consideration of an evaluation of conflicting rights and interests as legal excuse is generally formulated as follows:

"Whoever violates or jeopardizes a legally protected right or interests of lesser value in order to save thereby a legally protected right or interest of greater value does not act in violation of the law."

The lesser value must yield to the greater one. The act, when regarded from this point of view, is justified, its unlawfulness - and not merely the guilt of the perpetrator - is cancelled out.

This so-called principle of evaluating conflicting rights and interests first of all a formal principle which established the precedence of the more valuable right or interest as such. This formal evaluation principle requires on its part a further material evaluation of the rights or interest to be comparatively considered. This evaluation again requires to adopt the law and its purport to the general attitude of a civilization and, finally, to the conception of law itself. Let us examine the conclusions to be drawn from this legal situation in our case:

Agreement and so-called likely agreement, just as well as a national emergency and a war emergency, constitute special legal justifications, the recognition of which allows us to dispense with a recourse to the general principle of evaluating conflicting rights and interests. The latter retains its subsidiary importance. Furthermore, these two special legal justifications refer in their purport to a fair and equitable way of thinking as well as to the proportional importance of various types of evils; thus they themselves include the conception of evaluating conflict-

ing rights and values. For this reason, among others, the following must be explained in detail at this point:

a) A national emergency and a war emergency unmistakably were existing in 1942. Every day the life of thousands of wounded was endangered unless the threatening wound infection could be checked by applying proper remedies and by eliminating inadequate remedies. The danger was "momentary". Immediate help had to be provided. The "public interest" demanded the experimental clarification of this question. The evidence has shown that the question could not be clarified by experiments on animals or by observing of incidental wounds.

b) But the last word on this question has not yet been said just by referring to the public interest. Opposed to the public interest are the individual interests. The saying "necessity knows no law" cannot claim unlimited validity. But just as little can the infringement on individual interests in order to save others, be outright considered as "contrary to good morals". The evidence has shown that the members of the resistance movement of Camp Ravensbrueck who were condemned to death could escape the imminent execution only if they submitted to the experiments which form the subject of this indictment. There is no need to examine now and here whether the experimental subjects did give their consent or whether they

presumably would have consented, if, from their personal point of view and in the full knowledge of the situation, they could have made a decision within the meaning of an objective judicial opinion based on probability. What really matters is the question of whether the defendant, upon a just and fair evaluation of the interests of the general public and the real interests of the experimental subjects could come to the conclusion that, all circumstances considered, the execution of the experiments was justifiable. This question doubtlessly can be answered in the affirmative. Quite apart from the interest of the state in the execution of the experiments, the participation in the experiments was in the real and well-considered interest of the experimental subjects themselves, since this participation offered the only possibility of saving their lives by way of an act of mercy.

(15) The Defendant's Erroneous Assumption of an Agreement by the Experimental Subjects.

The hearing of the evidence has shown that the experimental subjects in Camp Ravensbrueck were not selected by the defendant Dr. Gebhardt nor by any of the other defendants, but that the selection was made by the competent agency within the Reich Security Main Office in Berlin or the Political Department of the Ravensbrueck Concentration Camp. During the conference in the beginning of July 1942, in which the conditions for the experiments were agreed upon, it was expressly assured that the experimental subjects were persons sentenced to death who were to be pardoned if they survived the experiments.

In view of the fact that the defendant Gebhardt did not himself select the experimental subjects and that, on the other hand, no complaint of any kind on the part of the experimental subjects were ever reported to him, - the defendant Fischer also was not in a position to make any personal observations along these lines, - we now must examine the question of the legal position of the defendant Gebhardt if he assumed erroneously the consent of the experimental subjects.

In criminal law it is a generally recognized principle that there can be no question of intentional action if there existed an erroneous assumption of justificatory facts. This principle can be found also in Art. 59 of the German Penal Code. But beyond that, this legal principle may be considered one of the principles which are generally valid and which are derived from the general principles of the criminal law of all civilized nations, thus representing an inherent part of our modern conception of criminal law. In application of this principle, - and even if the court does not consider the consent of the experimental subjects as proven and therefore does not provide the prerequisites for a legal excuse for objective reasons, - we still cannot assume an intentional act on the part of the defendant Gebhardt if he acted under the "erroneous assumption of an agreement by the experimental subjects."

(16) The Erroneous Assumption of Likely Agreement:

The same applies if the defendant Gebhardt erroneously assumed a likely consent of the experimental subjects. We do not mean here an erroneous assumption with regard to the legal suppositions of such a one, but the erroneous assumption of such facts, which, had they existed, would have induced the Tribunal to recognize the "likely consent." I am referring here to my argumentation for the legal excuse represented by the "likely consent," which I understand as "an objective judicial opinion based on probability and according to which the person concerned would have consented to the act from his own personal standpoint, if he had been fully aware of the circumstances." Provided that the defendant Dr. Gebhardt assumed the existence of such circumstances which seems certain according to the evidence - and even if he did so erroneously, the intent and thus the crime in this case also would be excluded according to the evidence - and even if he did so erroneously, the intent and thus the crime in this case also would be excluded according to the generally acknowledged principle.

(17) The Defendant's Erroneous Assumption of an Emergency (Putative Emergency),

I already mentioned the circumstances which justify the assumption of a national emergency and a war emergency caused by the special conditions prevailing in 1942. If these conditions were actually prevailing, the illegality of the act and not only the guilt of the perpetrator would be excluded, for reasons enumerated before. If the defendant had erroneously assumed circumstances which had they really existed would have justified a national emergency and a war emergency, then, according to general principles already mentioned, the intent of the defendant and thus his guilt would be eliminated also in this respect. The evidence especially the defendant's own statements on the witness stand, leave no doubt that when the experiments began in 1942, he had assumed the existence of such circumstances, which were

indeed the starting point and motive for ordering and carrying out these experiments.

(18) Action by Order and in Special Military Position.

The defendant Gebhardt carried out the experiments for testing the efficiency of the sulfonamides by direct order of the head of the state and Supreme Commander of the Wehrmacht, Adolf Hitler, as transmitted to him by his military chief, Reichsfuehrer-SS Himmler. In this case Gebhardt did not act as a surgeon and chief physician of a large clinic, but as General Lieutenant and Consulting surgeon of the Waffen-SS. When carrying out this order, the fact had to be considered that Germany was in a state of war, which threatened and made problematic the foundations of the German nation.

When the legal consequences arising from the fact that the defendant Gebhardt acted upon military orders, are examined, the constitutional and political conditions prevailing in Germany in 1942 should not be left without consideration. I shall deal with all questions arising from these conditions when evaluating the evidence presented in the case of the defendant Fritz Fischer. To avoid repetitions I refer to those later arguments which are equally relevant to the case of the defendant Gebhardt. The relation of the defendant Gebhardt to the Reich Fuehrer SS, Himmler, and to the Commander-in-Chief of the Wehrmacht, Hitler, was in this respect similar to the relation which existed between the defendants Fischer and Gebhardt.

In both cases acting by order and in a specific military capacity represents a legal justification, or at least an extenuating fact.

MR. SEIDL: I now ask the Tribunal to take notes of Numbers 19 to 31. I shall not read them into the record, but I should like to point out first in my closing brief and especially in the supplement in reply to the Prosecution. There are a number of statements which refer to what I have read and what I have alluded to.

I shall now turn to the case of the defendant Herta Oberhauser.

THE PRESIDENT: Counsel, it approaches five o'clock and you

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still have an hour and a half approximately remaining for your arguments.

The Tribunal will now be in recess until 9:30 o'clock tomorrow morning.

THE MARSHALL: The Tribunal will be in recess until 9:30 o'clock tomorrow morning.

(A recess was taken until 0930 Hours, 16 July 1947)

Official Transcript of the American Military
Tribunal in the matter of the United States
of America against Karl Brandt, et al,
defendants, sitting at Nurnberg, Germany, on
16 July 1947, 0930, Justice Seals presiding.

THE MARSHAL: Persons in the court room will please find their seats.

The Honorable, the Judges of Military Tribunal I.

Military Tribunal I is now in session. God save the United States
of America and this honorable Tribunal. There will be order in the court.

THE PRESIDENT: Mr. Marshal, will you ascertain if the defendants
are all present in court.

THE MARSHAL: May it please your Honors, all the defendants are
present in the court.

THE PRESIDENT: The secretary-general will note for the record the
presence of all the defendants in court. Counsel for the defendants
Gebhardt, Fischer and Oberhauser may proceed with his argument. Counsel,
you have one hour and 40 minutes remaining for the presentation of the
arguments on behalf of your three clients. You may proceed.

MR. SEIDL (Counsel for the Defendants Gebhardt, Fischer and Ober-
hauser): Your Honor, if you would take up now my final plea for the
Defendant Herta Oberhauser you would find in the index that it consists of
10 points. Point 1, which deals with Count I, I do not have to deal with
here after the Tribunal has already decided about the count of the
common plan or conspiracy. Supplementing what I said about this count,
referring to the Defendant Gebhardt, I should like to add that my final
plea for the Defendant Gebhardt, contains a few statements which deal with
the Law #10 of the Control Council and I would like to ask the Tribunal to
take note of these statements. I shall permit myself to add something to
this point in a supplement which I shall submit to the Tribunal.

THE PRESIDENT: Counsel may submit the supplement he requests.

MR. SEIDL: I now come to point 3 of my final plea for the
Defendant Herta Oberhauser which deals with the selection of experimental
subjects. I can say here conclusively as a result of the evidence that

the Defendant Oberhauser had nothing to do with the choice of the experimental subjects, that that was merely a matter of the organization of the Reichs Security Office or at least the political department of Camp Ravensbrueck. Number 5 of my brief deals with the treatment of experimental persons after surgical operation and this point deals with it from the legal point of view. The Tribunal will find this on page 13 of the English copy. Although the defendant Herta Oberhauser did not participate in the carrying out of the operations, she did attend to the experimental subjects under the direction of defendants Karl Gebhardt and Fritz Fischer insofar as the latter did not do this themselves. The evidence proves that especially the defendant Fischer in most cases carried out the post-operative treatment of the experimental subjects and especially the changing of the bandages and applications of new plaster casts. The activities of the defendant Oberhauser were limited mainly to the distribution of the various Sulfonamide preparations and the administering of pain-relieving preparations. She carried out the orders given her in this connection and did not develop any independent activity in connection with the post-operative treatment.

When reviewing the results of the hearing of the evidence, it can be said that the defendants Gebhardt and Fischer as well as the defendant Oberhauser did everything to keep the damage to be expected, as low as possible and to avoid fatalities. This is especially true in the case of surgical measures, which had to be taken to fight wound infection and particularly gas gangrene. These operations and treatments had to be carried out for the sake of the experimental subjects. These operations were, therefore, not carried out for experimental but for curative purposes. The defendant Oberhauser did not take part in these operations, but merely took over the post-operative treatment to an extent which I have already described. But what is true with regard to the post-operative treatment is true to an even higher degree regarding her activities concerning purely conservative medical treatment such as the administration of preparations in the treatment with analgesics and the changing of

dressings. For, the defendant Herta Oberhauser, by taking over the post-operative treatment after the experimental operation was carried out - and on which she had no influence at all -, did not accept any responsibility for the experiment as such. She would not have been asked to carry out the post-operative treatment, if her ward had not happened to be next to the large operating theater in the hospital of the Ravensbrueck Camp. Therefore, her actions can only be judged according to the regulations for professional conduct during curative treatment. The hearing of the evidence has given no final proof that the defendant intentionally or carelessly violated any of the professional rules generally recognized in medicine. It is correct that in some of the sworn affidavits presented by the prosecution in Document Book 10, the

defendant O b e r h a u s e r is accused of having neglected the care for the experimental subjects. In another connection I have already pointed out that these sworn affidavits are mainly founded on conclusions and also repeatedly contain allegations which are founded merely on hearsay. But these allegations are definitely contradictory to the statement of the witness D e i d e and the statement which was given by the witness Margareta M y d l a in her sworn affidavit (Exhibit Oberhauser No. 1). Especially this latter affidavit which was not contested by the prosecution, clearly proves that the defendant O b e r h a u s e r did everything within her power to help her patients if possible, and that in spite of the most difficult conditions she tried to treat patients in accordance with the principles generally recognized in medicine.

The presentation of evidence has, therefore, given no proof that the activity which is specified as "post-operative treatment" presents the set of facts necessary for conviction under any criminal law.

The same applies to the few deplorable, fatal cases which occurred in connection with the sulfanilamide experiments. With regard to the details I refer to the statements of the defendant Karl G e b h a r d t in the witness stand and my own arguments made in evaluation of the evidence on this Count in the case of the defendant Karl G e b h a r d t, and which will be supplemented in the closing brief. The hearing of the evidence has shown that the defendant Herta Oberhauser can not be blamed in any way for these three fatalities. She reported to her superior camp physician and the local medical officer whenever the symptoms of the disease gave rise to any doubt and also caused the defendant Dr. Karl Gebhardt or another medical officer of the Hohenlychen hospital to be called in. The defendant Herta Oberhauser could not do any more. If, despite all that, some cases resulted in fatalities it was obviously not due to anything the defendant Oberhauser had done or failed to do. In any case, the hearing of the evidence has not given a definite proof for the presence of

such a casual connection, nor has the evidence given any facts which would prove that the defendant acted carelessly and therefore criminally.

The importance of Count 4 of my brief seems to me to make it necessary to read this part into the record.

It is the preliminary examination of the experimental subjects which also was carried out by the defendant Oberhauser. I would ask the Tribunal to look for this on page 8 of the original.

The evidence has shown - and the defendant admitted it herself as witness on the stand - that she carried out the preliminary examination of the experimental subjects before the surgical operation and that she determined whether or not they were fit for an operation. Of what did this preliminary examination consist? From the defendant, Herta Oberhauser's own statement it can be seen that the examination consisted of examination of the experimental subjects for skin diseases and of a check-up of the heart and lungs. Furthermore, X-ray photographs were taken. However, the defendant Oberhauser had nothing to do with the evaluation of these. The examinations carried out by the defendant Oberhauser consisted therefore of nothing else but the application of examination methods which are customary before every surgical operation, even the smallest.

We have to add here that all these operations necessitated administration of a narcosis and, for this reason, this preliminary examination seemed most necessary.

From these facts the following legal conclusions can be drawn: In the evaluation of the evidence in the case of the defendant Karl Gebhardt I have already explained the reasons which inevitably bring about the adoption that for the legal consideration of the defendants' actions only that law, which was valid at the time of the deed, can be applied. They lived under this German law and were bound by the regulations of this legal system. If these basic legal principles are applied, which generally confirm with the principles of the penal law of all

civilized nations, the conclusion should be drawn that the preliminary examination, as carried out by the defendant Oberhauser could only be considered criminal if she had the intention to support these experiments with the examinations. This question must be answered in the negative. The task of the defendant Oberhauser consisted exclusively of the examination of experimental subjects selected by another office, and to separate and return those who, according to her medical conviction, were not fit for even an insignificant surgical operation. In view of the fact that she did not take part in any of the preliminary discussions nor was she informed of any of the medical deliberations in connection with these experiments - also proven by the evidence - it appears quite improbable that she herself wanted these experiments or that she had the intention of supporting these experiments in any way that could be considered criminal. According to the results of the evidence and especially in view of the coinciding statements of the three defendants themselves it must be presumed that the intentions of the defendant Oberhauser regarding these preliminary examinations were concentrated only on the desire to eliminate people who were physically unfit. This and only this was her intention. Where it was not possible to find such physical defects and to prove them objectively and to return the prisoners on the grounds of these findings, the defendant had no influence upon the further procedure. According to the coinciding statements of the defendants and especially the defendant Oberhauser's own testimony it must further be presumed that she did not want to have anything to do with the experiments as such, for the sole reason that she had more than enough to do with her own patients, who required extensive specialized treatment, and she could only have the one desire not to be burdened with further duties in addition to her original assignment.

According to the facts it also appears completely out of the question that the defendant Oberhauser supported in any way whatsoever the

decision to carry out these experiments, neither in the case of the defendant Karl Gebhardt nor in the case of any other person connected with these experiments, thus that any psychological assistance for the purpose of backing the intention of the principal defendant existed. The result of the evidence in this direction is completely unmistakable and I refer particularly to the statement of the defendant Karl Gebhardt in the witness stand.

In these circumstances it is difficult to understand what exactly should constitute a "promotion" of these experiments. The defendants had no "intent" to promote the principal crime and she actually "did" not promote it. The charge of attempted aiding and abetting in the meaning of the German Criminal Law must be eliminated for lack of an "intent" to that effect.

But one arrives at the same conclusion also if one applies the Participation Clauses of Control Council Law No. 10 to the conduct of the defendant Oberhauser. Here too a commission or omission can only be considered legally important insofar as the participant or or assistant was guided by the intent to support the crime of the principal criminal or to promote it by any other means. If this intent was lacking the actions, too, are legally unimportant even under application of Control Council Law No. 10. In judging the action of the defendant Oberhauser the Court will also have to take into consideration the fact that the sulfonamide experiments in the Ravensbrueck Camp were not carried out by some unknown doctors, but that a physician of the caliber of the defendant Karl Gebhardt was responsible for these experiments. The defendant Karl Gebhardt was Professor of Surgery and a doctor who was highly respected far beyond the boundaries of the German Reich. Beyond this he was the physician in charge of a large clinic which was located in the immediate vicinity of the Ravensbrueck Camp and although the defendant Herta Oberhauser as specialist for skin- and venereal diseases

had no special knowledge of the leading doctors in this field, it is, on the other hand, clear beyond a doubt, - from the presentation of evidence and especially from the testimony of the defendant Oberhauser herself, - that the defendant Karl Gebhardt was for her a medical authority of the first rank; and, if it were only for this reason, it must be held completely impossible that she in any legally important way could even have considered to fortify or strengthen the decision of the defendant Karl Gebhardt, to carry out these experiments which he himself conducted only in compliance with orders given him. By examining the experimental subjects she merely carried out her orders and did nothing which could rightly be called a consequential promotion of these experiments. Her position in the Camp and in connection with the experiments was so inferior that the intent to promote these experiments through personal decisive activities must be ruled out completely.

Add to this that any doubts about the legality of these experiments must have faded out before the reputation of the defendant Karl Gebhardt as a physician and surgeon, when the defendant Herta Oberhauser observed that the defendant Karl Gebhardt started to carry out and supervise these experiments personally and that he did not entrust the continuation of these to one of the doctors of the Ravensbrueck Camp but to one of the best doctors from the hospital in Hohenlychen.

I now come to point #6 of my plan, which is on page 16 of the original. It deals with the scientific evaluation of the experiment and the report on the result of the experiments as given at the meeting of the Consulting Specialists in Berlin in May, 1943.

The presentation of evidence has not only proved that the defendant Oberhauser was in no way connected with the preparatory discussions of these experiments and the decisions which led up to the sulfonamide experiments, but, furthermore, that the defendant Oberhauser had nothing to do with the scientific exploitation of the experiments and with the publishing of the results. The scientific utilization

of the result of the experiment was done exclusively by the defendants Karl Gebhardt and Fritz Fischer. The report on these experiments was also made exclusively by these two defendants. The defendant Herta Oberhauser was not even present at this session of the consulting specialists in Berlin in May 1943 and only learned about this report afterwards. These facts also clearly reveal that it was only by accident that defendant Oberhauser participated in the sulfonamide experiments and that her actions were not prompted by any scientific or other interests she may have had, but were exclusively caused by the fact that she was working in the Ravensbrueck camp at the time when these experiments were carried out.

(7) Acting on orders.

I have already stated that with the lawful consideration of the attitude of the defendant Herta Oberhauser in connection with the sulfonamide experiments, all the reasons for the exclusion of injustice and guilt should also be taken into account, which I have already gone into in the case of the defendant Karl Gebhardt. This applies particularly also to the reason for the exclusion of injustice as far as the consent of the experimental subjects is concerned and the reason for the exclusion of guilt in the erroneous acceptance of such a presumed consent. Furthermore, all these facts have to be considered which justify the assumption of a state of war emergency. The defendant Oberhauser can in particular allege that she had acted on orders, and that for this reason her conduct would either not be punishable at all, or that it would be at least justifiable to acknowledge this fact as mitigating to a considerable extent. Defendant Oberhauser did not find herself the object of military subordination. However, a few months after joining the administration of the Concentration Camp Ravensbrueck as camp doctor, she was sworn to duty by decree of the competent authorities. The fact of this compulsory service called for a much stricter condition of subordina-

tion and obedience than the principles of the general labor law had been applied. It must be added that the type of organization in a concentration camp differed only very little from that of a military service. Defendant Herta Oberhauser was not less bound to the orders she received than any other member of the SS or of the administration of the camp at the Concentration Camp of Ravensbrueck; consequently - just because she was a woman who naturally could assert herself even less than a man the reason for the exclusion of punishment or for mitigation of punishment should at least be recognized to the same extent as in the case of defendant Fritz Fischer, since she acted on orders. I shall deal separately with the legal questions arising from these proceedings when evaluating the evidence for the case of the defendant Fritz Fischer.

I should like to ask the Tribunal to take note of numbers 8 and 10. I need not go into detail about point 9 now, as the prosecution in their closing brief took that into consideration against defendant Oberhauser as to participation in sterilization experiments.

I now come to the case of the defendant Dr. Fritz Fischer. The index to the plea on behalf of this defendant shows that my statements contain eight points.

Point 1 deals with Part I of the indictment, common design or conspiracy. As the Tribunal has decided to withdraw this charge, I do not need to deal with the point.

I should like to ask the Tribunal to take note of Counts II and III and also Points 4 and 5, and I now come to Point 5, which deals with the justifications of the defendant Fischer, as well as the defendants Gebhardt and Oberhauser, acting on orders. This point is on page 7 of the original document, on page 9 of the English copy.

The defendant Fischer participated in the experiments for testing the effect of sulfanilamide upon orders of his medical and military superior Karl Gebhardt. It is recognized in the Penal Code of all civilized nations that action upon orders represents a reason for exemption from guilt, even if the order itself is contrary to law, but binding for the subordinate. In examining this legal question one proceeds from the principle that the Court disregards the reasons of justification and exemption from guilt put forward by me in the case of the defendant Karl Gebhardt and considers that both the order given to the defendant Karl Gebhardt himself, as also the passing on of this order to the defendant Fritz Fischer, are contrary to law.

The adherence to a binding order, even though it be contrary to law, on the part of the subordinate creates for him a reason for exemption from guilt and, therefore, renders him also exempt from punishment. This question is disputed only insofar as some consider the action of the subordinate not only excused but even "justified". Further examination of this question at issue seems, however, not necessary in these proceedings, since the result is the same in both cases, namely, the perpetrator's impunity.

The decisive action in the case on hand is, therefore, whether and in how far the "order" for the sulfanilamide experiments was binding for

the persons carrying it out. In view of the fact that, in principle, the law in force at the time is applicable, as the defendants lived under this law and it was binding for them and the application of a law which became effective later would violate the principle "nulla poene sine lege", the question is therefore to be examined within the framework of Article 47 of the German Military Penal Code.

I draw the attention of the Tribunal to the point that I shall come back to this in the supplement to my final statement.

According to the Paragraph 47 of the German Penal Code a subordinate who obeys is liable to be "punished as an accessory, if it is known to him that the order given by the superior concerned an act which has for its purpose the commission of a general or military crime or offense."

End of my quotation.

However, it is not correct, as is sometimes accepted, that Article 47 of the German Military Code itself settles the question in how far military orders are either binding or not binding. This is a question of public and administrative law. But it must always concern an "order regarding service matters", the same as in other military conditions, that is to say, something which "is inherent to military service". These assumptions are immediately present both in the case of the defendant Karl Gebhardt and in that of the defendant Fritz Fischer. Both were medical officers of the Waffen-SS; therefore a unit of the German Wehrmacht in which especially the principle of obedience was strongly pronounced. Karl Gebhardt was Fritz Fischer's immediate superior; in matters of duty his order to assist with the medical experiments to be undertaken was a binding order for the young medical officer Fischer.

In the investigation of the legal questions resulting from these circumstances, we will separate the case of the defendant Karl Gebhardt, where the "order" was issued from a very high authority - namely, from the head of the State and the Commander-in-Chief of the Wehrmacht - from the case of the defendant Fritz Fischer, in which there is a ques-

tion of an especially close relationship to his immediate military superior. Later I will return especially to the general questions of public law concerning the command of the Fuehrer.

a) The evidence has shown that the order for testing the effectiveness of sulfanilamide proceeded from the highest authority, namely, from the Commander-in-Chief of the Wehrmacht personally. The reasons of justification of the probable acceptance of the wartime state of emergency and the balancing of interests, as discussed fully already in the investigation of the case of the defendant Karl Gebhardt, gain importance independently first in the person of the defendant Fritz Fischer. But they have influence, of course, on the legality or illegality of the order. The investigation of this question has shown that the given order as such was legal. Even if one would not want to take this for granted, however, for a subordinate even an illegal order of binding nature is of moment.

Article 47 of the German Military Penal Code, as already observed, lets the punishment of the subordinate stand if "it was known" to the latter that the order of the superior "concerned an act which had for its purpose the commission of a general or military crime or offense." In all other cases the punishment touches only the commanding superior.

Just as in most military courts of other armies, the administration of justice re Article 47 of the German Military Penal Code also shows the tendency to a vast limitation of the penal responsibility of the subordinate. That this tendency has grown from the purpose "of guaranteeing the performance of the duty of obedience obligatory to the subordinate, in the interest of military discipline and the Wehrmacht's constant readiness for battle," changes nothing in the fact as such. Here it is a matter of evaluating the legal position at the time the act was committed.

Article 47 of the German Military Penal Code established a penal responsibility on the part of the subordinate only if it was "known" to him that the order concerned an act "the purpose" of which was a crime or

an offense. The German administration of justice demands in addition a "definite knowledge" on the part of the acting subordinate; accordingly, cases of mere doubt (conditional intent) or mere obligation to know (negligence) are expressly excluded. Neither is the idea satisfactory that the performance of the order resulted objectively in the committing of a crime or an offense. On the contrary, the superior must have intended this, and this fact must have been known to the subordinate.

In applying these principles there cannot be any doubt that these suppositions were not fulfilled either in the case of the defendant Karl Gebhardt or in the case of the defendant Fritz Fischer - to say nothing at all of the defendant Herta Oberhauser. Both of these defendants regarded the order given them by the head of the State as a measure of war which was conditioned by special circumstances caused by the war itself, and by means of which a question should be answered which was of decisive importance not only for the wounded, but beyond that, should furnish a contribution in the struggle for the foundations of life of the German people and for the existence of the Reich. Both defendants were convinced at that time that the order given them should have any other purpose but the committing of a punishable crime.

b) Then, in regard to the particular position of the defendant Fritz Fischer, the meaning of an order of the "immediate military superior" is to be investigated. At the beginning of the experiments, the defendant Fritz Fischer had the rank of a first lieutenant. He took part in the experiments at the direct command of his military and medical superior who held the rank of general. In view of the surpassing authority of the defendant Karl Gebhardt, as surgeon and chief of the clinic Hohenlychen, and his high military position, a refusal was completely out of the question.

On principle, no other points of view but those already discussed apply here either. Whether the order is a direct or an indirect one offers no reason for difference. In the case of the defendant Fritz Fischer, however, the following is still to be considered: whether it

"was known" etc. to the subordinate is always to be especially examined according to the special circumstances of the moment. At the same time, of course, a decisive part is played by the fact that the order for these experiments was given to the defendant Fritz Fischer, not by a military superior who would not have been in a position or duly qualified to give an expert decision of this question, but by a person who not only occupied a high military rank but beyond that had just that particular experience in the sphere in which the experiments were to be carried out. The defendant Karl Gebhardt was not only a recognized and leading German surgeon, but he had also as consulting surgeon to the Waffen-SS and as chief of a surgical reserve combat unit acquired special experience in the sphere of combat surgery and in the treatment of the bacteriological infection of wounds. The reason for this order given to the defendant Fritz Fischer by his chief must have affected him all the more convincingly as it coincided exactly with the experiences which the defendant Fritz Fischer himself had gained as medical officer with the First SS Armored Division in Russia.

In addition, there was the special framework in which all this took place: Fritz Fischer had been released from the combat unit on account of serious illness and had been ordered to the Hohenlychen clinic. He was under the immediate impression of hard experience at the front. In Hohenlychen he found himself in a clinic which operated in peacetime conditions under the energetic direction of a man extraordinarily gifted in organizational and scientific matters. Every building, every installation of this recognized model institute, the numerous clinical innovations and modern methods of treatment, every one of the many successful treatments of Hohenlychen was inseparably bound up with the name of the chief physician Karl Gebhardt and gave unconditional and unlimited value to his word and his authority in his entire environment.

For all these reasons the defendant Fritz Fischer can have had no doubt at all but that the performance of the order given him was from the medical standpoint a requisite and permissible war measure.

Precisely the open carrying out of the individual experimental measures, with the exclusion of every duty of secrecy, as well as the report of the results which was provided for in advance and also executed before a critical forum of the highest military physicians, were especially suited to nip in the bud any distrust of the justification of these experiments in the mind of the defendant Fritz Fischer.

Even if the defendant Fritz Fischer still had any last personal doubts, his opposition and subsequent refusal would under the circumstances have been just for him neither practicable, nor could it be expected of him.

The defendant Fritz Fischer has himself in the witness box explained his attitude towards military orders. The personal military service of the defendant in the front line, and his own serious war injury, are proof that his idea, that it is necessary in wartime to subordinate the individual to the common interests and the unconditional submission to military orders, is not an empty phrase to him but his sincere conviction and moral standard.

There is also an undeniable difference between the cold juristic view of an abstract military order, and the personal attitude of a man who had quite recently in his own experience seen thousands of young soldiers die for their fatherland while obediently executing a military command, and who is also in his heart prepared to make the same sacrifice for his fatherland. If we, furthermore, consider that in our case a 29 year old first lieutenant and assistant physician was confronted with the strict order of his superior general who was at the same time a scientific authority in the special research field, and who, on the whole was a strong personality with unusual influence, we cannot expect that the defendant Fritz Fischer could have opposed and refused the order.

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In judging these facts of the case we must not proceed without stating that the action of the Defendant Fritz FISCHER was not the essential reason for executing the facts with which he is charged in the Indictment. If the Defendant Fritz FISCHER had for one reason or another not been prepared or able to cooperate, the research program once ordered would nevertheless have been carried out just the same. Karl GEBHARDT would not have had any difficulty in choosing another assistant out of the number of his assistant-physicians in the clinic Hohenlychen. On account of the great respect in which Karl GEBHARDT was held at this clinic, probably everyone of his assistants would have been willing to do it, especially as these experiments were carried out by orders of the State.

Therefore, the action of the Defendant Fritz FISCHER did not constitute a condition, the absence of which would have prevented the acts contained in the Indictment, from being committed. FISCHER's refusal to cooperate would not have saved the persons to be used in the experiments from such. Fritz FISCHER was actually only a tool in the execution of the orders, a tool which could have been replaced any time; and in view of the existing strict order to carry out the experiments, it would definitely have been replaced.

There is no need to state in greater detail that the conduct of the Defendant Fritz FISCHER remained in any case confined to the individual orders which were given to him. It can be easily concluded that the Defendant was not responsible personally for his cooperation, as his chief, Karl GEBHARDT, gave him only very limited part orders as his clinical assistant, and this shows clearly again the purely military condition of subordination. As Fritz FISCHER also strictly adhered to the part-orders given to him and did not show any initiative of his own, it excludes him moreover from any responsibility concerning questions which were outside his sphere of action. It is impossible to make Fritz FISCHER responsible for questions connected with the legal

and medical preparation of the directives for the experiments and the cosmetic after-treatment.

Apart from this view-point, the special conditions of Public Law, which existed in Germany at the time of the action, ought to be mentioned. They were explained by Professor JAHREISS in his opening speech before the International Military Tribunal in the proceedings against Hermann GOERING and others. Professor JAHREISS thereby represented the following point of view:

"State orders, whether they lay down rules or decide individual cases, can always be measured against the existing written and unwritten law, but also against the rules of international law, morals and religion. Someone, even if only the conscience of the person giving the orders ordered something which he had no right to order? Or has he formed and published his order by an inadmissible procedure? But an unavoidable problem for all domination lies in this: Should or can it grant the members of its hierarchy, its officials and officers, the right - or even impose on them the duty - to examine at any time any order which demands obedience from them, to determine whether it is lawful, and to decide accordingly whether to obey or refuse? No domination which has appeared in history to date has given an affirmative answer to this question. Only certain members of the hierarchy were ever granted this right; and they were not granted it without limits. This was also the case, for instance, under the extremely democratic constitution of the German Reich during the Weimar Republic and is so today under the occupation rule of the four great powers over Germany.

In as far as such a right of examination is not granted to members of the hierarchy, the order has legal force for them.

All constitutional law, that of modern states as well, knows acts of state which must be respected by the authorities even when they are defective. Certain acts of laying down rules, certain decisions on individual cases which have received legal force, are valid even when the

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person giving the order has exceeded his competence or has made a mistake in form.

If only because the process of going back to a still higher order must finally come to an end, orders must exist under every government that are binding on the members of the hierarchy under all circumstances and are therefore law where the officials are concerned, even if outsiders may see that they are defective as regards content or form....
.....The result of the development in the Reich of Hitler was at any rate that HITLER became the supreme legislator as well as the supreme author of individual orders. It was not least of all under the impression of the surprising successes, or what were considered successes in Germany and abroad, above all during the course of this war, that he became this. Perhaps the German people are - even though with great differences between North and South, West and East - particularly easily subjected to actual power, particularly easily led by orders, particularly used to the idea of a superior. Thus the whole process may have been made easier.

Finally the only thing that was not quite clear was HITLER's relationship to the judiciary. For, even in Hitler-Germany, it was not possible to kill the idea that it was essential to allow justice to be exercised by independent courts, at least in matters which concern the wide masses in their everyday life. Up to the highest group of party officials - this has been shown by some of the speeches by the then Reich Justice Leader. The defendant, Dr. FRANK, presented here - there was resistance, which was actually not very successful, when justice in civil and ordinary criminal cases was also to be forced into the "sic jubeo" of the one man. But: apart from the judiciary, which was actually also tottering, absolute monarchy was complete. The Reichstag's pompous declaration about HITLER's legal position, dated the 26 April 1942 was actually only the statement of what had become practice long before.

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The Fuehrer's orders were law already a considerable time before this second World War.

In this state order of his, the German Reich was treated as a partner by the other states, and this in the whole field of politics. In this connection, I do not wish to stress the way (so impressive to the German people and so fatal to all opposition) in which this took place in 1936 at the Olympic Games, a show which Hitler could not order the delegations of foreign nations to attend, as he ordered Germans to the Nurnberg party rally in the case of his own state shows. I should like rather only to point out that the governments of the greatest nations in the world considered the word of this "almighty" man the final decision, incontestably valid for every German and based their decisions on major questions on the fact that Hitler's order was incontestably valid. To mention only the most striking cases, this fact was relied upon when the British Prime Minister, Neville Chamberlain, after the Munich conference, displayed the famous peace paper, when he handed it Croydon. This fact was adhered to when people went to war against the Reich as the barbarous despotism this one man.

No political system has yet pleased all people who live under it or who feel its effects abroad. The German political system in the Hitler era displeased a particularly large and ever increasing number of people at home and abroad.

But that does not in any way alter the fact that it existed, not leastly because of the recognition from abroad and because of its effectiveness, which caused a British Prime Minister to make the now world famous statement at a critical period, that democracies need two years longer than the totalitarian governments to attain a certain goal. Only one who has lived as if expelled from amongst his own people, amidst blindly believing masses who idolized this man as infallible, knows how firmly Hitler's power was anchored in the anonymous and innumerable following who believed him capable only of doing what was good and right.

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They did not know him personally, he was from them what propaganda made of him, but this he was so uncompromisingly that everybody who saw him from close to and saw otherwise, knew clearly that resistance was absolutely useless and, in the eyes of other people, was not even martyrdom.

Would it therefore not be a self-contradictory proceeding if both the following assertions were to be realized at the same time in the rules of this trial?....

.....The functionaries had neither the right nor the duty to examine the orders of the monarch to determine their legality. For then these orders could not be illegal at all, with one exception of those cases in which the monarch placed himself - according to the indisputable values of our times - outside every human order, and in which a real question of right or wrong was not put at all and thus a real examination was not demanded.

HITLER's will was the ultimate authority for their considerations on what to do and what not to do. The Fuehrer's order cut off every discussion. Therefore: A person who, as a functionary of the hierarchy refers to an order of the Fuehrer's, is not trying to provide a ground for being exempted from punishment for an illegal action, but he denies the assertion that his conduct is illegal; for the order which he complied with was legally unavailable.

Only a person, who has understood this, can have a conception of the difficult inner struggles which so many German officials had to fight out in those years in face of many a decree or resolution of Hitler's. For then such cases were not a question of a conflict between right and wrong:

Disputes about legality sank into insignificance. For then the problem was one of legitimacy: as time went on, human and divine law opposed each other ever more strongly and more frequently.

Therefore: Whatever the Charter understands by the orders which it

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acts aside as a ground for exemption from punishment, can the Fuehrer's order be meant by this? Can it come within the meaning of this rule? Must one not accept this order for what it was according to the interior German constitution as it had developed, a constitution which had been explicitly or implicitly recognized by the community of states?...The one supreme will became, quite simply, technically indisputable. It became the mechanical connecting link for the whole. A functionary who met with objections or even resistance to one of his orders from other functionaries only needed to refer to an order of the Fuehrer's to get his way. For this reason many, very many, among those Germans who felt Hitler's regime to be intolerable, who indeed hated him like the devil, looked ahead only with the greatest anxiety to the time when this man would disappear from the scene: for what would happen when this connecting link disappeared? It was a vicious circle.

I repeat: An order of the Fuehrer's was binding - and indeed legally binding - on the person to whom it was given, even if the directive was contrary to international law or to other traditional values."

So far the statements of Prof. JAKOBSS before the International Military Tribunal. The development presented here seems to be particularly relevant for the case of the defendant Fischer, since he himself in the witness box described his attitude towards the Fuehrer's command in a way which, because of his very youth, his idealistic conception of life and duty and his manly confession, was particularly convincing.

It is true that in the face of all this reference will be made to Article 8 of the Charter for the International Military Tribunal which reads: "The fact that a Defendant acted pursuant to the order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires."

Accordingly, Law No. 10 of the Control Council, Article II, paragraph 4 reads:

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"b) The fact that a person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime but may be considered in mitigation."

In the face of this objection the following is to be pointed out:

At the time of their actions the defendants were subject to German law according to which the degree of their responsibility was determined and, even to day, must justly be referred back to that moment. The following should be emphasized, however, in case the Tribunal should not apply the legal provisions in force at the time of the act, but should base its judgment on Law No. 10 of the Control Council, though it represents a manifest

violation of the prohibition of retroactive application of penal laws.

Even from the above named provision of the Law of the Control Council the principle cannot be derived that every command of a superior should under the aspect of Penal Law, be irrelevant under all circumstances. This also applies to the problem of the exemption from responsibility and exemption from penalty. The provision only states that the existence of such a command in itself does not exempt one from the responsibility for a crime; it does not however preclude by any means that in connection with other facts it may be relevant for this problem as well.

The guiding legal aspect underlying these deliberations is contained in the concept of the so-called conflict of duties which has been repeatedly mentioned before. This aspect does not coincide *eo ipso* with the 'objective' principle of balancing interests, as discussed in examining the case of the Defendant Karl GEBHARDT. In addition one must insist on consideration of the 'subjective' position of the person committing the act.

In other words, in order to arrive at a just appreciation of the case, the personal situation of the person committing the act at the moment of it being committed will have to be weighed as well. This applies particularly to the personal situation into which the person committing the act has been put by reasons of a higher command which is binding for him and influences him. Besides the general 'objective' principles of balancing interests, such a special 'subjective' state of coercion can and must therefore be considered in his favor also. A 'command' can, therefore, according to the concrete situation shift the boundaries of culpability further in his favor.

Reinhardt FRANK, the great German criminologist, has with regard to the problem of the so-called conflict of duties established the maxim: 'Inasfar as the conflict of duties has not been expressly regulated the maxim should prevail that the higher, the more significant, the more important duty is to be fulfilled at the expense of the less high one and that, therefore, omission to fulfill the latter one is not contrary to law.'

With good reason it has always been emphasized that in such a situation of conflict of diversified duties the decision is, in the end, not to be found in positive law, but it is of an ethical nature. That is why, in such a situation, a certain leeway must be left to the personal conscience: it is not possible here to arrive at everything through the coarse means of an outward penal provision. This completely 'personal' character of genuine ethical conflicts has also been fully recognized and emphasized in the authoritative philosophical literature. Nicolai HARTMANN, *Ethic* (2nd edition, 1935, P/ 421/22) says for instance, with regard to genuine conflicts of values: 'It is a fateful error to believe that such problems can be solved on principle in theory. There are borderline cases in which the conflict in conscience is grave enough to require a different solution according to the particular ethos of the person. For it lies in the very nature of such conflicts that values ^{are} balanced, and that it is not possible to emerge from them without becoming guilty. Accordingly, a man in this situation cannot help making a decision. A person faced with this serious conflict, incurring such a measure of responsibility, ought to decide this: To follow the dictates of his conscience to the best of his ability, i.e. according to his own live sense of the

level of values and accept the consequences."

No further argument should be needed for demonstrating that just from an ethical point of view measuring of such personal decisions by standards of Penal Law is out of the question.

I would like to ask the Tribunal to read points 6 and 7 and I would like to come to the next point of my final plea which deals with the membership of the defendant Fritz Fischer in the SS. The Tribunal will find that on page 31 of the original, which is page 33 of the English text.

In Count IV of the Indictment Defendant Fritz FISCHER is charged with the membership in an organization declared to be criminal by the International Military Tribunal, i.e. the membership of the Schutzstaffeln of the NSDAP (commonly known as the "SS").

The evidence has shown that Defendant joined the Weiter-SS (cavalry-SS) in 1934. Defendant has when interrogated as a witness on his own behalf explained in detail the reasons for his joining up. They were the same reasons which, in the years after the seizure of power by the National Socialists, forced and caused many hundreds of thousands of young Germans to join any of the formations or affiliations of the Party. The necessity for such a step was - just in the case of young university students - not only derived from the fact that granting of privileges during the course of study and the admission to examinations was rendered dependant upon it, but over and beyond this, it was, of their duty to join any of the formations of the Party and to do service there, owing to the decrees of the German Studentship as the legal representation of the

German Universities.

It is true, though, that membership of the SS was not precisely prescribed. Membership of the SA, the National-Socialist Motor Corps, or, the National Socialist Aviator Corps would have been sufficient. Defendant would have made his choice much more carefully, could he have had the faintest idea that 12 years afterwards this organisation would be declared criminal. That the Defendant Fritz FISCHER joined the SS was rather more in the nature of an accident, and was, last not least, occasioned by the fact that among the Party formations only the SS gave him the opportunity at that time to indulge in horseback-riding.

The Defendant joined a Reitersturm (Cavalry unit) of the SS in 1934. This fact is relevant in so far, as in the Judgment of the International Military Tribunal of 30 September 1946, declaring the SS a criminal organization, the so-called Reiter-SS was expressly excepted.

Apart from this fact, there seems to be good cause to consider, from a general point of view, the question of condemning a Defendant for his membership in an Organization declared criminal.

The International Military Tribunal has, in spite of all its restrictions and exceptions, in spite of time limits in its Judgment of 30 September 1946, violated a principle which forms an integral part of modern Criminal Law and present-day conception of law in general. It is the fundamental axiom that there can be no punishment when there is no guilt.

In this connection, the reasons should be briefly examined which, after the seizure of power by the National Socialists, in 1933, caused many hundreds of thousands

of young Germans to join the Party formations-apart from the pressure brought to bear upon them. Defendant Fritz FISCHER has explained these reasons in detail in the witness box, and I may be allowed to refer to this for the details. It is a fact that many young Germans, and last not least many members of the young student-group, silenced the misgivings they had for the very reason ultimately that they had to witness the former enemies of Germany after the First World War again and again denying political equality to democratically and parliamentarily governed Germany, and doing nothing, in realization of a truly constructive idea, to take into account the just interests of the German people. The misgivings about much abuse of National Socialism were bound to lose a good deal of their strength, when it was shown, in the years after the seizure of power, that also the other nations of Europe and the rest of the world did not hesitate to recognize the National-Socialist State, and, far from drawing the political or economical conclusions of their allegedly ideological antipathy - even went as far as to send their diplomatic representatives to the great demonstrations of the Party and to be officially represented at the Reich Party Congresses.

This state of affairs is relevant from the point of view of the evidence, insofar as it is proven in any case that with regard to the bad faith and the criminal intent of the individual members of the Organizations declared criminal, proof must be required in every individual case. A general assumption cannot be considered to be sufficient to justify condemnation on this Count.

In the case of the Defendant Fritz FISCHER it may be said in addition that after the outbreak of war he did not volunteer for the Waffen-SS, but was, on account of his

membership of the General-SS, like every German liable for military service, called up for the Army. With the exception of his work in the military hospital of Hohenlychen, Defendant served with the Waffen-SS always at the battle front. During the whole of the course of his service at the battle front he was medical officer with the Divisions of the Waffen-SS which suffered the greatest losses, which were always dispatched to those sectors of the front where danger was imminent, and where units had to be used which would not only fight with admirable valor, but could not be deterred either by any losses or personal sacrifices. During the whole of the time of his membership of the SS, Defendant FISCHER did frontline service which differed in nothing from the service of a soldier as experienced in the units of the Army. He has offered his sound limbs for his country and has given proof of the honesty of his ideas and his views. Such conduct of a young man of 26 years at the outbreak of war cannot now be declared criminal. The evidence has not furnished any clue as to Defendant Fritz FISCHER having had any knowledge of acts which caused the International Military Tribunal to declare the SS a criminal organization. In view of the fact that he did not join the Waffen-SS voluntarily, but was called up for it, that he himself neither committed a war crime, nor a crime against humanity in connection with the war, nor had any knowledge of it, conditions for condemnation according to Count IV of the Indictment do not appear to be fulfilled.

CERTIFICATE OF TRANSLATION

9 June 1947

I, E.J. Hinchliffe, Civ. No. Military Permit C26034, hereby certify, that I am thoroughly conversant with the English and German languages and that the above is a true and

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correct translation of the original document.

E.J. Hinchliffe
Civ.No.Military Permit 026034

"End"

In view of the fact that the Prosecution in no case of
my clients has made any specific application for sentence
I shall refrain from any formal application as to the
sentence.

THE PRESIDENT: The Tribunal will be in recess.

(A short recess was taken)

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THE MARSHAL: Persons in the court room will be seated.

The Tribunal is again in session.

THE PRESIDENT: Dr. Marx, you may proceed with your argument.

DR. MARX: (Defense Counsel for defendant Schroeder)

Your Honors, I now begin the plea for the defendant Professor Dr.
Schroeder.

Today we are at the end of this trail against German physicians which has been conducted for many months with greatest care and with the aid of every conceivable piece of evidence introduced by prosecution and defense.

It is now the task of the defense to show whether the serious charges which were leveled not only against the indicted physicians of this trial, but also against the entire German medical profession can be weakened or restricted to a certain degree.

In his opening speech of 9 December 1946, the chief Prosecutor General Taylor declared:

"...The paralyzing poison of Nazi superstition spread insidiously through the entire medical profession and in the same manner in which it destroyed character and morals, it blunted the reason....."

It can be said that such charges cannot be applied to the entire German medical profession. The majority of the German medical profession. The majority of the German medical profession knows itself innocent of the charge of degenerating medical morals, and there can be no question of a departure from medical ethics with these representatives of the German medical profession. They have rather, always retained their high ideals and concepts of the duties of the medical profession. The German medical profession in their majority did not know anything of the events which took place in concentration camps during the war and, when they learned of them, they turned away with disgust and indignation from actions which could have no further connection with the medical profession and which they themselves considered criminal.

Can the charges and accusations of the prosecution be applied to my client, Prof. Dr. Schroeder? Can it be asserted that the "paralyzing poison of Nazi superstition" crept into the system of this man and thus his character and his morals were destroyed by it, if on the other hand it can be said that Prof. Schroeder had nothing to do in the least with National Socialism, that he was never a member

of the Party and that he rejected completely its aims. Would it be possible to bring such a man in connection with criminal aims, a man to whom all subordinate medical officers looked with high esteem, for whose noble care the German Nursing profession always has been grateful, to whom learned men outside of the Wehrmacht showed considerable respect and maintained their faith and consideration even at this moment, when he being under the most serious charges has to fight for his honor, liberty and life?

The Defense hopes to prove that Prof. Schroeder is not guilty and that his shield of honor as a physician and an officer remains unblemished.

The Prosecution speaks in the first place of a criminal planning and conspiracy for the execution of war crimes in which even leading men of the medical service of the German Wehrmacht and, amongst them the defendant Prof. Dr. Schroeder, allegedly participated.

If one speaks at all of a criminal conspiracy, and if my client Prof. Schroeder in particular can be accused of participation in such a conspiracy, there ought to exist certain facts justifying the suspicion of his participation in criminal plans.

The Prosecution was not in a position to present even one single document showing Schroeder's personality in connection with such plans. For a conspiracy there must be a group of men acting on the basis of a common understanding, having common ideas, being in connection with one another and driving at a common aim. They are usually directed by a central office.

The Prosecution seems to believe that a connection existed between Prof. Schroeder in his capacity as chief of the Luftwaffe Medical Service and his subordinate officers for such a common plan. Because the assertion of the Prosecution that seven more defendants who were members of the Luftwaffe and subordinate to Schroeder cannot be understood otherwise.

It was pointed out however that the relations between Schroeder and the seven other defendants of the Luftwaffe were merely of an official nature, and were the same as between Prof. Schroeder and the Chief of the Wehrmacht Medical Service, his co-defendant, Prof. Handloser.

A look at the defendants dock will further convince you that no connections existed and can have existed between Prof. Schroeder and the majority of the other co-defendants. Three groups of defendants are to be distinguished: 1. The group of the Wehrmacht and Luftwaffe medical officers, 2. the group of the SS doctors, 3. a group that does not consist of physicians, but of higher administrative officials of SS and Party. It is not necessary to mention that in view of Schroeder's political and ideological attitude there can be no connection between him and the other two groups.

Prof. Schroeder's personality as well as the picture of his life and character will in the following briefly be described.

The numerous affidavits voluntarily put at the disposal of the Defense, and all the documents concerning Schroeder's life and professional work, clearly prove that Prof. Schroeder always put the highest demands to his own professional work, to the medical Ethics, that he had the highest concept of the service and the stand of the officer and, that he was deeply concerned with the welfare of the suffering mankind.

Prof. Schroeder in a really exemplary manner endeavored to organize the care for the wounded and the sick in the best possible way. He had not only the evidence and the statements, although they also mention much of it, but all the numerous field hospitals built under Schroeder's decisive influence, give proof of his efforts to utilize the newest technical and medical discoveries for the benefit of his sick and wounded. The hospitals of Brunswick, Hamburg, Westerland, Wismar, Greifswald, Hall, Frankfurt, Muenberg, to mention only a few of the large number, speak a more vivid language than

simple words. Professor Schroeder was also vice-president of the German Hospital System.

This is not the place to give a detailed picture of Schroeder as a personality and physician, it will be done elsewhere. I only want to deal with one point being of a decisive importance for the judgment Prof. Schroeder's life and work, and that is the description of Schroeder as a soldier.

Your Honors: A man in his sentiments, ideas and acts, in his relationships to other men and to his work depends not only on his character and his innate qualities, but he depends very much on his attitude and his surroundings.

What were Prof. Schroeder's surroundings? A glance at his life history will show. He was a soldier from his 19th year until the collapse in 1918. For 35 years without interruption he belonged to the Wehrmacht. Before world war I he entered the army with the intention to become a medical officer. He remained in the 100,000 men army, joined the new Wehrmacht, and in 1935 joined the Luftwaffe. His entire professional life was dedicated to the service of his people and country, and he never decided himself for any political party. His adjutant, Dr. Augustinick very justly said here before this Tribunal of his old chief: "Prof. Schroeder was an unpolitical man."

He was a soldier, the model of the old conscientious medical officer. The entire country, not a people divided into groups of parties and interests, was the meaning of life for the soldier, Schroeder. He kept far from political activities. The witness Dr. Hialscher, when examined before this Tribunal characterized the ignorance of the German officer with regard to his political surroundings, recognizing and appreciating at the same time his professional achievements. He was right. The education and military orders made the old officer a stranger in these matters. He accustomed to obey the orders of the government leaders. He was not entitled to criticize them. In his

honesty of conviction, in the sincerity of his thinking, and in his firm belief in the government he objected to it.

Then came the year 1933; the government was taken over by the National Socialists, the reorganization of the Wehrmacht was begun and welcomed by the old officer, because now the possibility was given to rebuild the Wehrmacht for the protection of the country. The new duties filled time and thoughts completely. There was no time left for personal matters, and even less for politics or party.

If the officer of the old school however, had at first welcomed the reconstitution of the order, he very soon was deeply disillusioned, when he had to recognize that the party continuously became more radical and that those elements were striving for the leadership, that from his point of view he could not respect. If in view of his education and his ideological attitude he disagreed with the way of thinking and the aims of the party, his dislike still increased when he noticed that there was an influx of elements into the positions of officers of the Wehrmacht, who were, as men and soldiers not suitable for the profession of an officer.

I have now described with a few strokes the position which faced an officer of the old school during the last few years, and Prof. Schroeder found himself in the same position.

One is here confronted with a simple question which appears quite natural: Why didn't that old soldier draw the simple conclusion from this development, which contradicted this basic attitude, and why didn't he leave, so that those men who desired to give an entirely new character to the German armed forces could do so freely? Would it not have been the simplest, clearest and, for an old officer cleanest solution of an inner conflict to leave the service?

The answer to that question for him could have been only a "no", for it would have meant his leaving the field without a battle and to surrender it to an inner enemy. The old soldier, the old officer,

sensed the unsound character of the development, but he hoped yet to be able to give a turn to matters and to bring about a healthier course of things. Therefore, he did not withdraw from the field; he tried by quiet purposeful work, by strict performance of his duty, as had been his life for decades, to be an example and a model, to be joined by a constantly growing group of like-minded people — so he hoped, so he worked, quietly. Prof. Schroeder held to these thoughts and this attitude even after he had risen to the highest positions in the medical circles of the Wehrmacht. He refused to join the Party, even when membership in the Party was open, and can say with pride that he has only his own achievements to be thanked for his promotion in the medical service. Undisturbed by any outside influences, Schroeder went his way and was a model of loyalty and fulfillment of duty to the medical officers under him. Such a man could never have given his assistance to a criminal plot.

As a specially clear proof of criminal plans the prosecution cites the annual meetings of the consulting physicians of the Wehrmacht, the purpose of which, according to the prosecution, was to announce and to evaluate the results of criminal experiments. In answer to that I can say: The minutes of these meetings show very clearly that this assumption of the prosecution cannot be correct. These meetings show very clearly that this assumption of the prosecution cannot be correct. These meetings were no different from similar meetings of representatives of medical science in other countries for the purpose of exchanging new medical knowledge gained in the meantime in all fields.

The same applied to the meetings of the consultant physicians where the experience gathered meanwhile, so important for the medical care of the Army was to be exchanged and made accessible to a larger circle of people.

This can be seen from the composition of the consultant physicians. They were the leading men of German medical science, university teachers and chiefs of recognized hospitals or scientific institutes, including scientists of well established repute who today, once more, are the teachers and leaders at German universities, hospitals and medical institutes. It is impossible to charge such men with criminal intent.

Thus, the prosecution has failed to supply any proof for the existence of a criminal group, criminal intent or conspiracy. Even less has it supplied any substantial indication for the fact that the defendant Prof. Dr. Schroeder had been part of a conspiracy, or from his character been capable of having been involved.

It is unthinkable to connect a man of his professional concepts and sense of honor with conspiratorial aims of a criminal nature, such as is charged by the prosecution. Conspiracies to commit crimes grow on a different soil from the one I have endeavored to describe.

Otherwise it would not have been possible for men of science who today again hold leading positions with German hospitals and universities and whose name are of repute throughout the world of science, for well known clergymen in high positions to have taken his part openly and without reserve without his or my solicitation. The picture they drew was that of a helpful and war-hearted doctor, a medical officer inspired by exemplary concepts of honor and profession, and of a man filled with love of humanity and respect for the dignity of the individual. Prof. Dr. Schroeder's life has been an exemplary one, free of all prejudices of race and class.

Prof. Dr. Meyer of the University of Teheran has drawn a particu-

ularly fitting picture of my client. He emphasized that when he, lawyer, was a racially persecuted man and was in need of help, Prof. Schroeder gave him vigorous support in those troublesome days and remained a loyal friend.

Thus the accusation raised by the prosecution against German medical science and particularly the assertion that through the contamination of the unholy Nazi spirit a general lowering of medical ethics and the sense of responsibility expected from a doctor could be noted, can certainly not apply to Prof. Dr. Schroeder. Never did he abandon the fundamental principle of his work as a doctor; to help and to heal and to avoid anything that would lead to permanent injury.

In detail, Prof. Dr. Schroeder has been indicted for participation in, or knowledge of the following human experiments in the concentration camps: high altitude experiments; freezing experiments; sulfonamide experiments; yellow fever experiments; typhus experiments; experiments concerning hepatitis, epidemics and sea-water experiments.

Before going into the relevant details here, I wish to make the following basic remarks:

Your Honors, a clear distinction must be made between the periods when Prof. Schroeder was not yet chief of the Medical Services of the Luftwaffe and the time when he held that office. We are concerned here with the period from the beginning of 1940 to the end of 1943. During that period Prof. Dr. Schroeder was the leading Medical Officer of Airfleet 2, and as such continually on service outside of Germany. It was only from 1 January 1944 onwards that he held the position of Chief of Medical Service of the Luftwaffe.

This shows clearly that Prof. Dr. Schroeder can not be held responsible for all experiments in concentration camps which were carried out prior to 1st Jan. 1944. His sphere of duties was confined to the medical care of the Airfleet units under him and he was without any official points of contact with the Medical Inspectorate unless the latter was

competent for his position as an Airfleet doctor.

To give a picture of Prof. Schroeder's duties at that time, I draw attention to the fact that the personnel strength of Airfleet 2 amounted to 200,000 to 300,000 men.

When dealing with Prof. Schroeder's responsibility for the high altitude experiments in Dachau, the prosecution had overlooked the fact that at the time in question, Prof. Schroeder was Airfleet doctor and maintained that during that time he was, after Prof. Dr. Hippke the Medical Chief, the second highest Medical Officer of the Luftwaffe. From that circumstance, the prosecution draws the inference that Prof. Schroeder, as the second highest Medical Officer, was the obvious deputy for Hippke and therefore had to know about the most important events concerning the Medical Inspectorate.

The defendant Prof. Schroeder has in his defense proven beyond doubt that he was not the most senior Medical Officer after Hippke and therefore not Hippke's deputy. As Generalarzt and Generalstabarzt he simply had the rank next to that of the Medical chief as did the other five Airfleet doctors. Above him in rank were two Generalstabsarzte, namely Generalstabarzt Dr. Neumueller and Dr. Blaul. The former had his office in Berlin and was in fact Hippke's deputy if and when necessary.

Prof. Dr. Schroeder has also refuted the further assumption of the prosecution that his relations with Prof. Dr. Hippke had been particularly close, for which reason Hippke had informed him about the high altitude experiments. In particular the witness, Dr. Augustinick, Schroeder's personal adjutant, during his service as an Airfleet doctor, has confirmed that relations between Hippke and Schroeder were extremely tense and unpleasant and that they confined themselves to discussing only the necessary things on the occasion of their highly infrequent official meetings.

Thus the assertion of the prosecution that by virtue of his official

position, Prof. Schroeder had to be informed of the high-altitude experiments, is without foundation.

Let me add here that the high-altitude experiments in Dachau were of no interest to Airfleet 2 because the units of that Airfleet was unable at the time to fly at the altitudes which formed the basis of the experiments.

For the same reason Prof. Dr. Schroeder can not be charged with responsibility for the freezing experiments in concentration camp Dachau because at that time he was serving far from Berlin, with his Airfleet in Southern Italy, Sicily and Africa.

His agency was not represented at the conference on "Sea- and Water-Distress" in October 1942 in Euerberg. He therefore did not receive a direct report about Prof. Holzlochner's lecture.

The conclusion reached by the prosecution from the fact that the pamphlet "Sea- and Winter Distress" which was sent to Prof. Schroeder's agency in 1943 that it showed in Holzlochner's lecture contained therein of what nature the experiments carried out were, has also been clearly refuted by Dr. Schroeder. He could rely here not only on the sworn testimony by witness Augustinick, but also on his own statements. Prof. Schroeder understood Holzlochner's report to the effect that these were experiments made by Prof. Holzlochner with German pilots rescued from the sea at the rescue station Vissand which he had established. The term "Rescued from the water" justified him particularly in his assumption. To Schroeder, as an Airfleet doctor, the important thing was the final result of the experiments, that is the speedy re-warming of pilots who had crashed into the sea and were still alive. This meant a change of the old methods of a slow re-warming and helped to avoid death by heart failure, what is known as "Rescue-Collapse". The new discovery here was that the temperature of people rescued from the water sinks by about four degrees, which formerly had in many cases led to death. It is obvious that

Prof. Schroeder at that time was kept extremely busy as a Leading Physician with the duties of the African Theater, that he did not have the time to bother about the details of the report and that he was interested only in final result.

The sulfonamide experiments also took place during the period of time when Prof. Schroeder was serving in Italy as an Airfleet doctor. The sole incriminating point produced by the prosecution, in regard to these experiments, was participation at the meeting of Consulting Physicians in 1943 when sulfonamide experiments in the concentration camp Ravensbrueck were discussed. In actual fact, Prof. Dr. Schroeder was not present at that meeting. We had here a mistake on the part of co-defendant Dr. Fischer who has since corrected his mistake on direct examination. At that time Prof. Schroeder was permanently at his agency in Italy as was confirmed by the witness Dr. Augustinick, he was indispensable there and had his hands full.

Nor did any representative of his agency take part in the 1943 meeting. The consultant surgeon of Airfleet 2, Prof. Buerkle, who in Camp, had been earmarked for attendance at the meeting it is true, but had been prevented from participating for the same reasons as Prof. Schroeder himself. As consultant surgeon he had to remain at the elbow of the Airfleet doctor.

Prof. Schroeder furthermore has been brought into connection with yellow fever, hepatitis epidemica and typhus experiments.

The same applies to these experiments as well. Schroeder is unable to recognize any responsibility for these experiments insofar as they took place in the period of time prior to January 1st, 1944. It would therefore appear unnecessary to deal with these events during that period of time but the following remarks ought to be made.

Prof. Schroeder never received a communication about yellow-fever experiments during the period of time in question. He was not in-

formed or consulted by the Medical Inspectorate about them, nor did he order such experiments, nor has he taken part in them in any way. Prof. Schroeder merely knew that a yellow fever vaccine was to be manufactured. The prosecution does not assert that experiments were carried out on human beings with yellow fever vaccines. They were undoubtedly not carried out, all that happened was that the vaccine was manufactured. The Airfleet doctor had nothing to do with its manufacture which was up to the agencies and research-workers at home. The Medical Inspectorate of the Luftwaffe had, in 1942/43, ordered Prof. Haagen, in Strassburg, to manufacture yellow-fever vaccine, but this assignment was cancelled after the end of the Africa campaign.

Professor Schroeder had nothing at all to do with this assignment which confined itself to the production of vaccines in the laboratory. This was within the competence of the Medical Inspectorate from which Professor Schroeder moreover was rather far removed in space.

Further, the Prosecution accuses Professor Schroeder of having participated in Haagen's experiments with epidemic jaundice. The statements of the Prosecution do not indicate what the nature of this participation should have been. Here also it must be pointed out — even if we suppose that Haagen received an order from the Medical Inspectorate of the Luftwaffe — that Professor Schroeder personally is not incriminated thereby because this order was the sole responsibility of the then Chief of the Medical Services.

In order to give a clear outline I may be permitted to point out that though Professor Haagen was Oberstabsarzt in Reserve of the Luftwaffe and Consulting Hygienist of the Air Force Reich he still kept his civilian employment as a director of the Hygiene Institute of the University of Straasburg and in this capacity he was not subjected to the channel of command of the Medical Inspectorate. Haagen, in his capacity as Director of the Hygiene Institute and well known virus research worker, knew how to obtain research assignments, or to be more correct, research subsidies in order to cover the expenses connected with his researches.

According to Professor Schroeder's knowledge Haagen never received a research assignment on hepatitis epidemica, neither during Professor Hinkel's term of office, nor when Schroeder was Chief of the Medical Services. He did however receive such a research assignment from the Reich Research Council, but this was exclusively in

in his capacity as Director of the Hygiene Institute Strassburg. This research assignment was designated as Top Secret and was to be dealt with accordingly. A connection with the Chief of the Medical Service of the Luftwaffe didn't exist at all for Professor Schroeder; Haagen was only responsible to his civilian supervisory agency.

Since it was, as aforesaid, a Top Secret, Haagen was not even allowed to report this research assignment to the Chief of the Medical Service of the Luftwaffe, since secrecy was made a strenuous duty according to Fuehrer Decree No. 1. He only could, and was allowed, to report to such agencies who had some connection with the discharge of his task. This was, in the first place, the agency who issued the assignment, viz. the Reich Research Council.

From the fact, that within the framework of Professor Haagen projected work for the Reich Research Council he contacted various research workers in Germany whose work on epidemic jaundice was recognized and that the one or the other of these people was a Consulting Physician of the Luftwaffe. One cannot draw the conclusion that thus he had collaborated with the Medical Inspectorate. What counted for Haagen exclusively was the scientific qualification of the physicians and research workers consulted and he selected them regardless of which branch of the Armed Forces they may have belonged to.

Moreover, epidemic jaundice experiments on humans were never under Haagen brought under way. The witness Edith Schmidt has testified to this fact under oath before this Tribunal.

Professor Schroeder, therefore, is also not incriminated as regards the problem of Hepatitis Epidemica, first, because he took no part in the issue of an assignment, second, because the Medical Inspectorate never issued a research assignment to Haagen, because

Haagen had his research assignments from the Reich Research Council in his capacity as Director of the Hygiene Institute of the University of Strasbourg, and finally, because experiments on humans were never conducted. At the most, they may have been planned.

Furthermore, Professor Schroeder is charged with participation in the Haagen typhus experiments in the Natzweiler Concentration Camp. Here again the Prosecution relies on assertions without being able to prove this serious charge.

Against this, the defense must state:

Professor Schroeder denies all responsibility for any assignments for the carrying out of experiments in the field of typhus for his person, since on the basis of his position at the time he had nothing to do with any such experiments and his official duties were limited to his work as Air Force Physician 2.

Only after he took over his position as Chief of the Medical Service of the Luftwaffe did he learn that in 1942 the then Medical Inspector of the Luftwaffe had issued an assignment to Professor Haagen in Strasbourg to produce typhus vaccine on a large scale. No experiments on human beings in any form were included. Professor Schroeder obtained knowledge of this production assignment, which was outside of his own period of office as Medical Chief in 1942, when Haagen applied for an extension of this production assignment and for the grant of further research subsidies in 1944. The testimony of Professor Haagen proves that he, Professor Haagen, did not conduct any experiments on humans with this vaccine.

Professor Schroeder, therefore, is only concerned with the activities which were connected with Professor Haagen after 1 January 1944.

Here the Prosecution relies on a letter of Professor Haagen to the Medical Inspectorate of the Luftwaffe in which the outbreak of a typhus epidemic in Natzweiler is mentioned. But from this one

cannot incriminate Professor Schroeder, and still less from the letter which answered Professor Haagens letter just mentioned on behalf of the Medical Inspectorate.

In the first place it must be pointed out that this letter doesn't bear Schroeder's signature, but was signed by his Chief of Staff, Kahnt. At that time Professor Schroeder was on an official trip. Further, the contents of this letter show that the Chief of Staff, Kahnt, didn't even know what the place named Natzweiler meant otherwise it couldn't be explained that a high medical officer in Dr. Kahnt's rank would have assumed to ask such a question. If Kahnt had known that Natzweiler was a concentration camp, he would not have been permitted to ask such a question since no report about the happenings inside a concentration camp was permitted because this was the sole competence of the SS and the SS had ordered severest secrecy. Further it appears from the contents of the letter that Haagen certainly could not have conducted any criminal experiments on concentration camp inmates because otherwise he would not have made a report to the Chief of the Medical Inspectorate whose ideas of his duties were known to him and the secrecy imposed on him would have been reason enough not to say anything about the matter.

Moreover, Professor Schroeder was not in Berlin at the critical time but on an official trip, a fact which has been affirmed by witnesses.

Professor Haagen as a witness testified before this Tribunal that he never experimented on humans with typhus virus, but that he was concerned with combatting a serious and wide spread typhus epidemic in the Natzweiler Camp which broke out in February 1944 and was brought in from the East by some inmates....about the spread of the epidemic the witness Grandjean testified that he alone with a nurse looked after 1200 typhus patients when he was an inmate nurse. The

camp physician had requested the help of the Hygiene Institute Strassbourg to fight the epidemic. Haagen came with all the means at his disposal.

Professor Haagen denied, under oath, that he experimented on human beings. The evidence of the witness Edith Schmidt is not reliable, since she obtained some knowledge by furtively looking into the records of Professor Haagen's assistant, Miss Crodel. The witness has no expert knowledge; therefore it is altogether possible that she has made a mistake. Also the personal veracity of the witness must be doubted very much since she was a morphine addict. Her evidence is refuted by the rather credible testimony of the witness Wyworaki, who unlike the witness Schmidt, knew all of Professor Haagen's activities from her own observation and work; she was sure of herself when she declared that there were no experiments conducted on humans and that the whole work of Professor Haagen in Malsweiler was the fight against the typhus epidemic.

It has not even been proved that Professor Haagen conducted experiments on humans with a criminal intent, let alone that Professor Schroeder is responsible for the activities of Haagen. The Prosecution has attempted to say that Haagen does not tell the truth or was committing a perjury but this testimony is confirmed by the testimony of the witness Wyworski and Grandjean. Too I ask why Professor Le Grue was not brought to the witness stand. He was here, he would have been able to confirm Professor Haagen's scientific testimony fully. When Professor Schroeder visited in Strassbourg to inspect the laboratories of Professor Haagen, he did not hear the least from Haagen about experiments on human beings; there was only talk of animal experiments and he only looked at the animals and cages which had been prepared by Haagen. This is affirmed by the sworn testimony of the witness Augustinick who was present during the whole time when Schroeder was with Professor Haagen.

Also, the Prosecution regards it as incriminating that the co-defendant Professor Rose was his subordinate in his capacity as General Physician of the Luftwaffe and Consulting Hygienist. Rose, too, is brought into connection with criminal experiments by the Prosecution. A responsibility of Professor Schroeder for experiments which are laid to the door of Professor Rose for the period before the 1 January 1944, cannot be recognized. Even during the time when Professor Schroeder was Chief of the Medical Service of the Luftwaffe he had no connection whatever with the activities of Professor Rose in Buchenwald and these activities of Professor Rose had nothing to do with the Medical Inspectorate of the Luftwaffe. In this respect Professor Rose acted in his capacity as Vice-President of the Robert Koch-Institute and it behoves us to point out that this was an institute entirely separate and independent from the Medical Inspectorate. This emanates particularly from the fact that Professor Rose first visited Buchenwald in 1942 accompanied by Professor Gildemeister who was President of the Robert Koch Institute at that time. This visit didn't take place either in Professor Rose's capacity as Medical Officer of the Luftwaffe nor in his capacity as Consultant Hygienist of the Luftwaffe, but in connection with his position at the Robert Koch Institute.

The same holds good of the Prosecutions pointer to the Copenhagen vaccine. In this direction I may be permitted to refer to the fact, that Professor Rose applied for leave with the Luftwaffe in order to go to Copenhagen to obtain some vaccine and made this journey only in his capacity as Vice-President of the Robert Koch Institute and

Consequently all proof is lacking and no connection whatsoever can be constituted between Professor Schroeder and the activity of Professor Rose which was completely independent and separated from the Medical Inspectorate of the Luftwaffe and which was carried out by order of the Reich Research Council and the Robert Koch Institute.

And when Professor Schroeder is held responsible for Rose's letter to the defendant Mrugowsky this does not incriminate Professor Schroeder because this letter to Mrugowsky was written at the beginning of December 1943 at a time when Professor Schroeder had not yet taken over the office of Medical Chief and was in the office of the Medical Inspectorate. Professor Schroeder did not order any experiments to be carried out on human beings, nor did he have knowledge of them or did he have to have knowledge of them. No basis is given for his participation in them. For this period of time we do not even have any conclusive circumstantial evidence, so that it can be said that any guilt on the part of Professor Schroeder has not been established. Therefore, the request is justified to acquit Professor Schroeder from these counts in the indictment.

I am now coming to the count of the indictment "Participation of the defendant Professor Dr. Schroeder in the sea water experiments which were carried out in the Dachau concentration camp."

In the case of these experiments Professor Schroeder's participation has been established, and he has accepted the responsibility as far as the preparation and the planning of these experiments are concerned. Professor Schroeder has mainly been accused by the Prosecution for having permitted these experiments to be carried out in a concentration camp. The Prosecution in its case against Professor Schroeder further stated that these experiments were not necessary at all and it drew the conclusion that the experiments had only been ordered in order to torture people and in order to subject them to unnecessary cruelty; it also stated that it was clear that in no case had the experimental subjects been volunteers.

Therefore it is the task of the Defense to show in the following paragraphs why from the point of view of Professor Schroeder as Chief of the Medical Inspectorate of the Luftwaffe these experiments had to be considered necessary, and just what reasons motivated him to give his approval for the execution of the experiments in a concentration camp.

The first question therefore is - why and from what considerations were there experiments order at all? It must be stated in advance here, that as far as the Chief of the Medical Inspectorate Professor Schroeder was concerned, he did not have to deal with part of the problem in this case in examining the question whether one or the other method for making sea water drinkable was more suitable; the problem for him existed in its entirety and it could not be divided. It was: The rescue of ship-wrecked persons from dying from the lack of water and finding the best method as a protection against this danger. This problem had already been handled by various interested agencies for quite some time, and various individual questions for the solution of this problem had arisen. No method for making sea water drinkable had been found and it was not clear what procedure should be advocated.

In the course of the year 1943 almost simultaneously two methods for making seawater drinkable were offered. One of them, so called Wofatit, had been developed by Dr. Schaefer in collaboration with I.G. Farben. Another, the Berkatit method, represented the invention of Stabsingenieur Berka.

It would be quite clearly recognised that Schaefer's Wofatit represented the ideal solution, because this method removed all the salt from the sea water and changed it into drinking water, while the Berka method let the salt remain in the seawater and only improved the taste of the sea water through the addition of various sugar and vitamin drugs. We agree with the Prosecution and the expert Professor Dr. Ivy when they state that a chemist in the course of one afternoon could have decided by means of a short experiment whether Wofatit or

Berkatit was better. The participating agencies of the Medical Service of the Luftwaffe, Professor Schroeder and Dr. Becker-Freysong realized that quite clearly. From the chemical point of view this problem could also have been solved in a simple manner.

The difficulty which existed for Professor Schroeder with regard to this problem, however, was within another field; this was the shortage of raw materials prevailing at the time, when had been brought about in Germany by the war. This circumstance made it possible for the Technical Office of the Luftwaffe to oppose the introduction of the Wofatit and to consider the Berkatit method, because the raw materials for the latter method could be procured without any difficulty and production could be started right away, since the production facilities for the appropriate amounts were already in existence. It was different as far as Wofatit was concerned. Considerable amounts of silver were required for its production, which could not be set aside for the production of Wofatit without damaging other production branches which also needed this metal. The Technical Office of the Luftwaffe therefore had already decided in favor of the introduction of Berkatit on 1 July 1944. Professor Schroeder, in his capacity as Chief of the Medical Inspectorate, however, could not have assumed the responsibility for having the units which were entrusted to his professional medical care equipped with the Berkatit method, because the danger existed that ship-wrecked aviators, deceived by the improvement in the taste of seawater would drink it in larger amounts and thus increase the danger of their dying of thirst. The question also had to be clarified, whether the ship-wrecked crew of an airplane completely adrift at sea should go without any food or water whatsoever or whether they should consume a certain amount of seawater rather than no water at all. This last question could only be clarified by carrying out an experiment on a human being. An experiment on animals would not suffice in this respect, because the distribution of water in the body of animals differs from that

a human being. By proving its medical objections the Medical Inspectorate would also have been able to make its point-of-view heard by the Technical Office, if the medical expert, Professor Dr. Eppinger, one of the best-known internists not only of Germany, but of entire Europe, had not sided with the Technical Office. Professor Eppinger in the conference of the Technical Office of 25 May 1944 expressly voiced the opinion, that the Berka-method was suitable, because the human kidney during a certain period of time could concentrate salt up to 3% and because the vitamins which had been added to the Berka-method would be suitable for speeding up the excretion of the salt from the human organism. This opinion was also shared in the same conference by the pharmacologist Professor Haubner, who is still one of the leading specialists in the field today.

Professor Schroeder would not have been able to turn down both methods. He then would have been reproached with the fact, that he had not done everything within his power in order to make the position of ship-wrecked German soldiers more bearable and to save them from dying because of the lack of water. It therefore becomes evident, that these considerations on the part of Schroeder give us proof of his high feeling of responsibility; in no way at all was it easy for him to give his approval for the execution of such experiments.

The further development also shows clearly that Schroeder, in spite of the fact that he was extremely busy with official matters devoted the greatest care and conscientiousness to this matter. He did not just decide to select Dachau as the place where the experiments were to be carried out. Originally he did not even harbor such a thought, but he intended to have the experiments carried out in a tree-experiment in institutes which were owned by the Luftwaffe. He was primarily considering the Luftwaffe-Hospital at Brunswick for this purpose. On 1 July 1944 he turned to the Chief Medical Officer of this hospital,

who was competent in the matter, who, however, disapproved of it. This became evident from the certificate by Dr. Harriehausen, who was a Generalarzt at the time. Now Prof. Schroeder began to consider the Military Medical Academy of the Luftwaffe in Berlin, where he intended to use the young officer candidates in this academy as experimental subjects. An inquiry which he addressed there was also unsuccessful. The reason why his requests were turned down in each case was, that just at this particular time the OKW had issued a strict order to the effect, that all convalescents were to be returned immediately from the hospitals to their units, and that the officer candidates of the academy were to be given a combat assignment. For the same reason, the suggestion of Professor Beiglboeck, to carry out the experiments at the Field Hospital Tarvis also remained unsuccessful.

The further possibility, perhaps to use German civilians for the experiments was completely out of question, because at this time it was not possible to find young men in the age groups necessary in this case within the German civilian population, because all of them either had been conscripted for military service or for Labor service. Professor Schroeder, therefore, had no choice but to follow the suggestion to consider the Dachau concentration Camp for this experimental station.

Prof. Schroeder was in no way informed about conditions in a concentration camp. He thought the circumstances in such a camp were no different from those prevailing in a military camp and only the names Dachau and Oranienburg were known to him as concentration camps. In this connection, it may be pointed out that the SS surrounded events in the concentration camps with an almost impenetrable veil of secrecy. Schroeder never listened to foreign radio stations, in the circles of his medical officers, such events were never discussed, and I may point out here that an express opponent of National Socialism, one less than the former Prussian Minister of the Interior,

Severing, testified as a witness in the IMT trial that he had had no knowledge of the events in the concentration camps and he had different sources of information at his disposal than had Prof. Schroeder. If Professor Schroeder had had any idea of what happened in concentration camps while he was away from Germany then in view of his ideology as a faithful Christian he would have refused such contact with concentration camps as results from ordering these experiments. The decisive point in Schroeder's favor is that the experiments were not to be carried out under supervision and command of the SS Camp Leadership but, ~~completely~~ separate, under the special leadership of a Luftwaffe Medical Officer and recognized specialist. As a further consideration, Prof. Schroeder had to take into account that only then could a useful result be achieved in these experiments, if they could be carried out without interruption or hindrance. Because of the then prevalent almost daily air raids over the entire area of Germany, no guarantee for an uninterrupted execution of these experiments could be given in any spot in Germany, however, it was known that air raids on concentration camps did not take place. Moreover, the charge can not be brought against Prof. Schroeder that he chose a concentration camp because he then had available defenseless tools who, perfect, had to subject themselves to the experiments.

The very opposite is true. It was clear to Professor Schroeder that he could carry out these experiments only with voluntary experimental subjects if he wanted to be successful, for the director of the experiments depended on the willing cooperation of the experimental subjects, for in no other way could usable clinical data be achieved. Every involuntary experimental person would have had the power to drop out from the experiment prematurely by feigning indisposition or pain, and, in this way, would have caused the director of the experiment to terminate it prematurely.

For the further evaluation of Professor Schroeder's conduct especially his conversation with the Reich Physician SS Grawitz must be considered. Professor Schroeder expressed the opinion to Grawitz that he could only work with healthy and voluntary experimental persons whose age corresponded to that of the pilots under his command, and he made the further condition that the experimental persons should have the same physiological and racial requisites as the members of the German Wehrmacht in question. In direct examination Professor Schroeder testified, under oath, that in this connection he talked to Grawitz about dishonorably discharged former members of the German Wehrmacht who, he knew, had been transferred to concentration camps because of the seriousness of their offenses.

Professor Schroeder could not assume, nor was any report on the part of Grawitz or the SS leadership made to him, that the SS leadership did not accept this suggestion and that instead of former members of the German Wehrmacht, Gypsies had been decided upon for experimental purposes. Professor Schroeder, from his point of view, could rely on Grawitz to make arrangements according to his suggestions; he had no reason to expect that the SS would decide upon experimental persons, against his well founded wish, who, racially and physiologically did not have the prerequisites demanded by Professor Schroeder.

Because of the extremely heavy official duties caused by the

imminent collapse of German military resistance for Professor Schroeder in his capacity as Chief Medical Officer, this affair was only a small segment of his official duties and it must be admitted that he could not concern himself further with this affair.

A further consideration which Professor Schroeder had to make was whether such experiments were dangerous and possibly damaging to the health of the experimental subjects. Professor Schroeder had thoroughly studied this question and contemplated all possible aspects of the problem. Professor Schroeder also knew that seawater is used by doctors for drinking cures and that the criteria of harmfulness is seen in the doses. If this question was given medical supervision then there would be no danger to health. Therefore, the prosecution's charge that he failed to take into account sufficiently the possible hazards is not justified.

Nothing shows the high degree of responsibility which characterized Professor Schroeder more than the instructions which the Medical Inspector issued to the man carrying out the experiments.

Professor Schroeder was convinced that the experiments held no danger to the experimental subjects and he expressed this opinion to Reichsarzt SS Grawitz. Such danger was excluded particularly if and when the quantity of seawater to be taken in was regulated in accordance with the best medical experiences, and when it was definitely ordered that the experiments should be stopped at a certain time; and, furthermore, if the selection of the man in charge of the experiments guaranteed, on the basis of professional and ethical standards, that the experiments would be carried out in a humane manner taking into account all medical and clinical considerations.

Therefore, it is fully justified if Professor Schroeder claims that he, from his position as a physician and a leading medical officer, considered all possible situations and attempted to avert all possible sources of dangers as far as humanly possible. His direction to the

man in charge to discontinue the experiments as soon as the experimental subject refused to take in further water and if threatening damages to the body were recognizable, must be mentioned in Schroeder's favor. The person carrying out the experiments were furnished all necessary assistants and a number of special co-workers from medical circles as well as all machinery to carry out his work in an orderly fashion.

The contention that both the planning and preparation of the experiments by Schroeder can stand any examination, that that planning was with full moral responsibility and with a true feeling of duty and humanity was reaffirmed, too, before this Tribunal by Professor Dr. Volhard, as well as the American expert, Professor Ivy. It is simply unthinkable that instructions to one conducting experiments could be more correct from a medical point of view than those which Professor Schroeder worked out.

By this plea and the evidence, all charges against Professor Schroeder in the seawater complex are refuted. Above all, it has been proved that it was not his intention to carry out experiments on non-voluntary experimental subjects. I need not dwell on the contents of his letter to the Reichsrat SS of 7 June 1944 which the prosecution has used to try to prove that Professor Schroeder considered the experiments with voluntary subjects terminated and said he now had the intention to use non-voluntary subjects; that is to say, prisoners from concentration camps. The defense's observation that this paragraph of the letter to Grawitz can be interpreted in many ways must be used to give the defendant the benefit of the doubt. Professor Schroeder was convinced of the harmless character of the experiments. He decided to carry out experiments in a concentration camp only after all other means were exhausted and only submitting to the pressure of the military and economic situation prevailing in Germany at that time. While planning the experiments, he proved to be a careful physician who examined all possibilities thoroughly.

Your Honors, this is the manner and attitude which Professor Schroeder showed in the seawater complex. If the course of the experiments was not such as Professor Schroeder had anticipated, he can, under no circumstances, be charged with the responsibility for it. It is certain, however, that none of the experimental subjects suffered any damage to their health from the experiments, and that they all, after only short periods of time, recovered their full strength.

Your Honors, if one surveys the conduct of Professor Schroeder during the entire period from 1940 until the end of the war one will not be able to find one single piece of evidence to show that Professor Schroeder at any time or in any manner violated the duties which the calling of a physician and medical ethics prescribed for him. In no instance did he act in a manner which could not stand the examination by a court. One may well claim that he never disregarded the maxim of Hippocrates "primum nil nocere", but preserved it as a guiding principle of his actions as a doctor and officer of the medical services of the German Luftwaffe.

The prosecution has failed to prove that Schroeder ever ordered such an experiment during the period of time covered by the charges of the prosecution, or that he participated or had knowledge of any such experiment. It has not even been proved that it was possible or necessary for him to gain knowledge of such experiments. Professor Schroeder has clearly explained why he could not gain such knowledge. For the whole period of time from 1942 to the end of 1943 the responsibility must rest on Professor Hippke, but not on Professor Schroeder.

Your Honors, from innumerable letters which I received from colleagues of Dr. Schroeder, men who enjoy the highest reputation in medical circles and who are to be regarded the leading men of German medical science even today, one thing becomes evident again and again: none of them can believe that Professor Schroeder, for whom they still preserve respect and affection, could ever have committed a dishonorable

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act or could have violated the high duties of his profession. All of them have expressed the hope that the innocence of Professor Schroeder will be demonstrated and be reaffirmed by the judgment of this High Tribunal. I, as defense counsel, have failed to gain any other impression of the personality and character of Professor Schroeder during the long time of our collaboration.

Let me conclude my plea for Professor Schroeder with the application that you may be pleased to pronounce an acquittal of Professor Schroeder under all charges levelled against him.

THE PRESIDENT: Doctor, the Tribunal allowed an extra fifteen minutes for your address. I would ask counsel to endeavor to confine their arguments to the hour which has been allocated. The Tribunal realizes that this is not always easy. At the same time, the arguments must be concluded by Friday evening. I realize that some of the defendants need more time than others. If any of the defendants do not need their full hour, that time can be devoted to the benefit of other defendants.

The Tribunal will now be in recess until 1:30 o'clock.

(A recess was taken until 1330 hours, 16 July 1947)

AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours, 16 July 1947.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal has available an English translation of the argument on behalf of Defendant Blome, so the Tribunal will now listen to Dr. Sauter on behalf of defendant Blome. The Tribunal hopes that the hour allocated will be sufficient.

DR. SAUTER: Your Honor, Honorable Judges of the Tribunal: The result of the evidence for the case of Defendant Blome, was given for translation on the 24th of June and the translation has been submitted to the Tribunal. In a supplement to this document on 2nd July I have made a synthesis of the important parts and which I have quoted and otherwise made use of. In another supplement on 30 June 1947, which has not yet been submitted to you by the translators. I have considered those documents which the prosecution have only submitted after the case of Blome had been concluded, and they would therefore not have been contained in my original document. And furthermore, your Honor, in a document 13 July, as the defense counsel, I have expressed myself as to the attitude of the prosecution. I am referring to all these matters, now and I should like you to regard them as having been submitted.

My considerations of the case Blome I have based on a quotation of American Historian Professor Arnold Nash. In the summer of 1946 Arnold Nash, the American Historian, came to Germany to spend his vacation here; on his arrival in Bremen he was assailed by the journalists with the question, why had he chosen Germany of all countries as the place of his vacation after the ending of the Second World War, Germany, a wilderness of ruins, the country of the concentration camp infamies where every step and every look recalled the memory of millionfold murder of innocent Jews, and Russian prisoners of war, of Polish underground soldiers and displaced workers from East Europe. The American historian Arnold Nash answered in one single sentence: "Every scholar has two homelands, his own and Germany."

THE PRESIDENT: It would seem clear that you will not be able to use all of this argument which has been placed before the Tribunal in the space allocated to you. You are prepared —

DR. SAUTER: I shall be able to manage with one hour, your Honor. In my statement on pages two and five I have explained how the whole milieu has, more and more created prejudices, prejudices against the individual defendant in this case. Prejudices, in fact which worked, as it were against the whole of the German Medical Profession and even the whole of the German people. I have therefore pointed out the exemplary attitude of Professor Nash.

I quote from my plea on page four. I read: "During the 5-1/2 years of war, the world has learned only ugly things about Germany and the prejudice thus created, has increased considerably through the revelations made during the 2 years since the end of the war. Atrocity after atrocity, innumerable infamies, mass murder and slavery of unrivalled cruelty have been proved and will remain for ever a stain on the German name. But it is the Nurnberg trials, particular, which, in their thoroughness and objectivity, have shown the basis of this regime and those responsible for it represented only an amazingly small Clique which banded around Hitler and formed, with them, a pledged community composed of criminal elements which did not shrink from destroying the entire German people if they could thus retain power and their lives

This we have heard here in the court room with particularly startling clearness from the former defendant Albert Speer. But it is just through the Nurnberg trials that the whole world knows if it only cares to listen, that the German people in its overwhelming majority wanted nothing to do with this tyranny, had inwardly nothing in common with it, and was not even allowed to learn of its worst outrages, and that the German people who stood outside that criminal clique, longed more and more as the months passed for the day when the world outside would deliver it from this clique. You, as judges, have 23 defendants to judge here, and your verdict will depend in the first place on whether you can include these 23 defendants in that criminal clique or not; whether you regard as proven or not that these defendants, by virtue of their position in the Third Reich, were able to recognize the criminal excesses of the regime in their full extent; whether they consented to these excesses; whether perhaps they even took part in them, or whether and how far these defendants were also deluded in the same way as 99% of the German people, and were just as powerless against it as our entire nation.

I have only to investigate here the results of the evidence as far as it concerns the two defendants, Dr. Blome and Dr. Ruff; with complete objectivity and from unbiased observation I definitely believe that I must conclude that in any case these two defendants did not belong to that criminal clique which had formed itself like a brazen ring around Hitler and Himmler, around Kaltenbrunner and Heydrich and the other millionfold murderers.

So far to the quotation from my plea. I shall proceed without quoting. Under point 2 of my document, pages 5 to 14 I explain my attitude to the charge that during the Hitler time the standard of the medical profession completely deteriorated. I have also taken position against making Dr. Blome responsible for this. I have

shown conclusively that Dr. Blome has the merit and the right to claim the merit, that he has done everything in the power of a human being to proceed in his work and the work of the medical profession, and that he has taken every care that all of the medical profession should exemplify tolerance and true love. Imminent scientists, high ranking scientists of international fame, have certified this as far as Dr. Blome is concerned. For instance, Prof. von Bergmann, Prof. Martius, Prof. Stoeckel, Dr. Straskosch and others, the affidavits of whom have been submitted to the Tribunal. At this moment, I do not want to deal with this problem, because it is quite obvious that all of these statements of the Prosecution do not deal with a criminal guilt, but with a strictly moral offense or political responsibility, which is not identical with a penal guilt and which does not come under the jurisdiction of this Tribunal.

Under Point III, on pages 14 to 43, I come to the actual experimental facts of the case in which Blome is charged with complete responsibility by the prosecution on pages 14 to 18. I have examined whether Dr. Blome had taken part in any way in the lost gas experiments of Dr. Raecher at Dachau. I have explained that these two assignments of the Reich Council for Research had not been given by Dr. Blome, but that Dr. Sauerbruch was the originator thereof and that the notation in the card index of the council is only a mistake of the staff. Blome had nothing to do with such experiments and they were not within his competency. He was not interested in them and it can be seen that it was absolutely possible, shall we say, that he had nothing to do with such experiments, which were exclusively within the competence of Dr. Sauerbruch. It is also doubtful whether from the very beginning these concerned human experiments at all, or whether they were not perhaps experiments with animals.

Malaria and sulfonamide experiments did also not concern Dr. Blome,

as I have said on pages 18 to 20 of my plea. The unimportant fact that a man like Rudolf Brandt, in his various affidavits, has assumed that Blome was the deputy of Conti and as such must have been informed about these experiments does not determine anything. This is an assumption on the part of Rudolf Brandt which can not be maintained.

It is especially surprising to me that the prosecution also charged Dr. Blome with euthanasia, especially as they must have considered for some time whether the charge against Blome should not be dropped. Referring to the euthanasia question, the prosecution deals with the chart which was submitted by the defendant Brack, or which at least was supposed to be made according to facts purported by him, but which is obviously wrong as the defendant Brack himself said, as a witness. Blome never took part in this program, he never supported it, but on the contrary, when he heard about this action he tried to clarify the matter and oppose it although this again was not in his competency and he had of course no right to do anything against it. Thus I come to on pages 21 and 24 where I have pointed out that Blome was one of the few people within the party who, in his book, which came out in 1941, took position openly against the euthanasia program of the German government.

In this book which is quoted on page 15 of the prosecution's closing brief he has expressly stated that one could only defend the euthanasia program if there was some legal justification which would create a legal right if therefore would make it part of their legal program. Furthermore Blome stated that euthanasia should only be applied if people, incurably sick people, asked the doctors to be relieved of their suffering. In the book by Professor Blome, the quotation is verbally: "We ask ourselves whether in the case of lives of inferior people the Doctor

could not take legal steps to end a life before its time had come. We think of those very ill people who can not be cured, who can only expect physical and psychological suffering until their deaths and who ask the Doctor to be relieved from their terrible suffering." So far the quotation in Blome's book. I can only say, if these demands by the defendant Blome had been fulfilled, if a legal basis had been presented and if one had just tried to fulfill the wishes of incurably diseased people, possibly nobody would have thought to charge the defendants before this Tribunal with participation in the euthanasia program.

Your Honors, the prosecution charges the defendant Blome with the proposed murder of tubercular Poles. This charge seems to me almost tragic. Because of the importance of this program, I shall read my statements, as from page 24 of the document which is in front of you. Here I take position as to this charge by the Prosecution and refer you to page 24, No. 5:

Probably the most severe accusation against Dr. Blome seemed to be the allegation that he had proposed the murder of 25 - 30 000 tubercular Poles and had taken part in carrying out this plan.

The evidence clearly shows, however, that this accusation is quite unfounded. I maintain on the contrary:

- a) it is not true that Dr. Blome approved or supported this murderous plan and
- b) it is also untrue that this plan was ever carried out. It is true, though, that it was just Dr. Blome who has prevented this devilish plan. It was Dr. Blome who, by his clever intervention has saved the life of the 25,000 - 30,000 tubercular Poles who were to be "liquidated".

The documents in document book no. 9 show that this plan first existed at Gauleiter Greiser and Reichsfuehrer SS Himmler. Blome was then detached to this matter because it was known that he

had for many years made the fight against tuberculosis the aim of his life and because he built his cancer institute in the same Gau in which Grubeiter Greiser governed. Blome then stated his attitude clearly in the well-known letter of 18 November 1942 (Document Book 9, page 10, Document No. 250, Exhibit 203); in regard to this plan. He discussed the three possibilities which existed and explained the pros and cons of each of these three possibilities in detail. These three possibilities are either "L i q u i d a t i o n", i.e., the murder of these Poles suffering from incurable tuberculosis, or their i n t e r n m e n t in isolated institutions, or lastly their settlement in a reservation. In his letter of the 18 November 1942 (appendix 25) he definitely rejected the first possibility and advocated the latter possibility.

I n t h i s B l o m e w a s c o m p l e t e l y s u c c e s s -
f u l .

Greiser was so much impressed by Blome's arguments that he no longer dared to carry out the liquidation of the Poles which had been decided upon. In fact, he submitted Dr. Blome's memorandum to the Reichsfuehrer SS Himmler so that he should obtain a decision from Hitler himself. This, already, was a remarkable success of Blome's because Himmler had already ordered the liquidation of the Poles. Blome's arguments made such an impression even on the bloodhound Himmler, that contrary to Greiser's expectations he cautiously put the matter before Hitler again and obtained his definite ruling. It should be remembered that this in itself would not have been necessary any more because not only had Conti agreed to the murder,

but from Greiser's cover note of 21 November 1942 it is obvious that Hitler also had given his approval to the extermination of the Poles already before.

Thereupon, after a subsequent examination of the matter, Hitler withdrew the extermination order and thus Himmler had no alternative but to do the same. This is clearly proved by Himmler's letter of 3 December 1942 (Doc. Book 9, Document 251, Exh. 204, App. 26). The extermination of the Poles did not take place; this is due to Blome.

Although these facts are incontestably proved by the documents presented, the prosecution nevertheless upheld the charge against Blome. This evidently was due to the peculiar wording of Blome's letter to Greiser of 18 November 1942. The prosecution in their speech of 19 December 1946 described this letter as a "devilish masterpiece of murderous interest". In considering this case the prevailing conditions should be born in mind. Dr. Blome knew that the tuberculous Poles were lost, that their murder had been decided upon unless it was possible on some grounds to change Hitler's mind at the last moment. The statement of the witness Dr. Gundenmann (Doc. Book Blome Doc. No. 1, Page 1 - 5, App. 26) proved that Blome, at that time, as is confirmed by Blome's own testimony (German examination record of 17 March 1947, page 4607, App. 27) strove for days for a successful wording of his letter; he repeatedly drafted the letter, then rejected the wording again and finally introduced arguments in the letter which he hoped to be successful; from the very beginning he was aware, of course, that his intervention was bound to fail and have no success if he described Hitler's planned extermination of the Poles as a crime and downright murder and had solemnly protested against it. In this way Blome would have achieved nothing for the Poles, but had to expect to be brought before a court himself and sentenced for sabotaging an order of the Fuehrer, or to

disappear in a concentration-camp without any legal sentence. With such a primitive method as entering a solemn protest by calling on the laws of humanity of justice nothing would have been achieved with Hitler, especially when he had already made up his mind and had decided on a certain matter and had already given the necessary execution orders; in such an event Hitler was usually inaccessible and would not listen to any counter proposals. Dr. Blome knew this, of course, just as well as, for instance, the Gauleiter of Niederrhein (Lower Rhine) who in connection with a similar problem (sterilization) in his letter of 24 August 1942 (Doc. Book 5, Page 16, Document 039, Exh. 153) pointed out the importance of "enemy propaganda" as he considered this most likely to be successful. Dr. Blome therefore looked for such reasons which would perhaps have a decisive influence on Hitler and these were either the Church or the other nations. It is understandable that Hitler, in view of the tense situation at that time, amidst the second world war, did not want to break completely with the church and he also had to regard the opinion of the foreign countries so as not to antagonize all neutral states. Dr. Blome speculated on these two points; in his letter of 18 November 1942 he emphasized in a skilful manner and with all his determination these two points of view and with those two references he achieved full success.

It may now be realized why Blome in the early part of his letter tried to give Hitler the impression that he (Blome) fully agreed with the plan as such for the extermination of the Poles and why he even pretended that everything was already prepared for the execution of this plan. Hitler had, so to speak, only to press the button and 25,000 to 30,000 Poles would be done away with. This was merely a trick which Blome used in order to ensure a favorable consideration of his proposals 2 and 3 (interment or reservation). If Dr. Blome had written that he declined to approve such an order of the Fuehrer, that, as a consequence, no preparations for its execution

had been made, and that he would rather resign than become a party to a mass murder, then Hitler would have had his customary fit, Blome would have been finished as far as he was concerned, he would, of course, have entirely disregarded the protest of such a "saboteur", and in the interests of so-called "reasons of State" the Fuehrer's orders would of course, have been strictly carried out. To prevent this, Dr. Blome had to pretend for the time being, that he was ready to acknowledge the Fuehrer's orders as a matter of course and, where possible, to participate personally in their execution, if Hitler, as Head of the State, so desired. However, when weighing the pros and cons, Dr. Blome was able to bring to the foreground points of view against the plan of extermination and which, conceivably, might greatly impress Hitler.

Blome's letter of 18 November 1942 can only be explained thus, and was intended in this way (c.f. with this, affidavit Gundersmann of 18 Dec. 1946, Doc. book Blome, Doc. No. 1, App. 25). Dr. Blome, on the strength of this letter can not then be convicted. For it is certain that Hitler thereupon dropped his plan and completely rescinded his orders for the murder.

This success, which could hardly have been anticipated because of Hitler's obstinacy and vringlory completely justifies the defendant Blome. It proves that Blome's conception was the right one and that his manipulations saved the lives of the Poles.

Another matter helped Blome considerably, which must not be overlooked here: shortly before, Hitler had cancelled the continuation of the Euthanasia Program. Apparently he did this under the influence of numerous protests which had been made by the two Christian Churches and, reaction abroad also played a considerable part in this because mass destruction of the insane had been taken up repeatedly by the foreign press with particular stress on reproaching the Nazi regime. Dr. Blome made use of these

points of view which had proved effective in the case of the Euthanasia Program, and they also produced telling effects in the case of the tubercular Poles.

Why did the Prosecuting authorities maintain the accusation against Dr. Blome in spite of all this? Apparently this was solely on account of an affidavit by the co-defendant Rudolf Brandt. In his affidavit of 24 October 1945 (Doc. Book 9, p. 17, Doc. No. 441, Exh. 205) Rudolf Brandt completely suppresses the letters which cause the complete rescinding of the plan for murder. He is silent about these letters although it can be proved that they passed through his hands, were initialed and handed down to lower offices by him.

During his examination by the defense, Rudolf Brandt was reproached for his untruthfulness (see German minutes of the examination of 24 March 1947, p. 5020/22, App. 29). He was unable to offer an explanation for it, failed to answer and was at a loss to endure the reproach of untruthfulness, of deliberate untruthfulness. Altogether, Rudolf Brandt has made an amazing number of affidavits; he has supplied without scruples the Public Prosecuting authorities with about every affidavit desired for the incrimination of co-defendants, and he made likewise, with equal readiness, affidavits for these co-defendants which directly contradicted his former assertions. What he confirms under oath today, he denies under oath tomorrow and vice-versa! However, it must be stated that the affidavit which Rudolf Brandt made against Dr. Blome dated 24 October 1945 was the climax of his mendacity. After the experience in this trial, and after having become acquainted, as we have, with a man like Rudolf Brandt, it would be ridiculous to even consider attaching any weight of the affidavit of a man as we have got to know in Rudolf Brandt. His affidavit of 24 Novem-

ber 1946 has been entirely refuted by documents introduced by the Prosecuting authorities. It is unnecessary, therefore to examine to what extent Rudolf Brandt's untruthfulness can be traced to his state of mental health.

During the session of 9 Dec. 1946 (German examination records p. 107 of 9 Dec. 1946) the Prosecuting authorities announced: "We shall produce evidence to show that the program was executed towards the end of 1942 and at the beginning of 1943, and that on the strength of proposals by Blome and Greiser, many Poles were exterminated without pity, and that others were transported to remote camps where there were no medical facilities whatever and where thousands died."

This evidence has not been produced so far by the Prosecuting authorities, although the defense, during the session of 17 March 1947 (German examination records P. 4621) referred in particular to this lack of evidence. The assertions of a Rudolf Brandt in this respect cannot be evaluated as "evidence", even if it had not been completely retracted and even if it had not already been completely refuted by additional documents submitted by the Prosecution. If the Prosecuting authorities had succeeded in producing the witness Perwitschky, who had already been proposed in 1946, and who had been approved by the Tribunal, then his testimony would have produced additional clear proof that Blome actually prevented the proposed mass murder.

We know the later fate of these Poles who suffered from incurable open tuberculosis from the affidavit of Dr. Gundermann, the highest medical officer of the Warthe Gau (i.e. the territory in which the tubercular Poles were to be liquidated). The fight against tuberculosis was a legal task of the Public Health Office which were subordinated in the Warthe Gau to the witness Dr. Gundermann. As a result of difficulties caused by the war, it was not possible to

accommodate during the war, either in restricted institutions or in a segregated area those suffering from tuberculosis; these two possibilities, which had been examined in a letter dated 18 November 1942 from Blome to Freiser were therefore out of the question, for the time being. Therefore the tubercular Poles were provided for according to the same legal regulations which applied to tubercular Germans in the old Reich. Legal regulations notwithstanding, a separate Tuberculosis Welfare Office with Polish physicians and nurses was established in the various Health Offices of the Warthe Gau. (See Doc. Book Blome Doc. No. 1, pp. 4-5, App. 30). Therefore the contention by the Prosecution "that the accommodation of sick Poles in restricted institutions resulted in the comparatively rapid death of the sick or, that the transportation of the sick into a reserved area meant that, "they were left to their fate, provided with few physicians and with few or no nursing personnel", is devoid of application. (Examination record of 19 December 1946, p. 789-799.)

It should be observed, however, that these proposals by Blome did not originate from him, but had already been discussed during the meeting of the German Tuberculosis Society in 1937, and went back to proposals which had already been worked out years before by English research workers tuberculosis instructions from the International Tuberculosis Commission, and which had been generally approved. (c.f. Report of the meeting in Doc. Book Blome, Supplement I, Doc. 14, p. 24, App. 31). Therefore even if the existence of these proposals had been known, it cannot be said that they contradicted in any way the laws of humanity. According to widespread views held by the responsible circles, such measures are necessary if tuberculosis, of which millions die yearly, is to be fought effectively, and if the healthy portion of the population is to be protected effectively against the dangers of infection through incurable, tubercular patients. In this case, the protection

of the healthy population against infection appears more important than consideration for the unrestricted liberty of incurable patients (c.f. pertaining examination records of 17 March 1947 pp. 4611/4615/4618 to 4619).

In concluding this count of the indictment I should like to emphasize two facts in characterizing Blome's attitude towards Crimes against Humanity, which have been clearly proven by the evidence:

- a) In 1941 Blome prevented the realization of Dr. Conti's plan, whereby the Polish intelligentsia was to be sterilized and thereby biologically exterminated (compare Affidavit Dr. Boehm in Document Book Blome, page 13/14, Doc. No. 4, Exh. 7, App. 33 and Affidavit by Dr. Blome on 17 March 1947 German interrogation record page 4624-25, App. 34) and
- b) Blome prevented the murder of Poles in the year 1942, that is at a time when Germany was still at the height of its Military Power and could not yet know such a defeat as Stalingrad. In the cross-examination the prosecutor attempted to present the suggestion to Blome that he would have agreed to the liquidation of the Poles, if a guarantee of absolute secrecy could have been assured. Blome, it was assumed had only "feared the effects of the propaganda". (German interrogation record, page 4853/56.)

Justice and truth demand that it be confirmed in the verdict that the only motive for Blome's actions were purely humanitarian and medically ethical reasons. It is therefore just to protect the defendant Blome against later unjustified reproaches. Blome's letter to Greiser of 18 November 1942 was a "Masterpiece", but not in the sense as presented by the Prosecution, that is, not (as has been said) a "devilish masterpiece of insidious desire for murder", but rather a well thought out intervention against a devilish murder plan, the successful prevention of which will

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remain a historical credit to Blome.

DR. SAUTER: So far the quotations in connection with tuberculosis. The merit of Dr. Blome which I have just spoken about cannot be denied by the closing brief of the Prosecution in which they use the term nonsense, the affidavit of Rudolf Brandt, and therefore the affidavit of Rudolf Brandt can have no probative value to this issue. During the proceedings Prosecution has charged the defendant Blome with participating in biological warfare. To this question I have taken position on page 32 to 43 and I have explained that on the German side of this there were some preparations for biological warfare which had to be made in order to prevent any attacks on the part of the enemy in this way. These were only preparations of a defensive nature. They were never aggressive acts. It cannot be denied - it is a fact - that no acts were committed - no human experiments were carried through in this field. And, therefore, punishable acts on the part of the defendant Blome in this sphere of biological warfare do not aim. All statements maintaining this are wrong and of no relevance. As to the case of Blome, during the whole proceedings it could not be clarified what this mentioned assumption of the IMT was based on. The Prosecution of the present trial has tried for months to find some of the documents of the IMT documents which would have been able to support this assumption, and wanted therefore support the charge against Dr. Blome. In spite of searching for months and months no such document to support these assumptions could be found. Therefore, it cannot be proved today which experiments in biological warfare were made on prisoners of war and to what extent, by whose such experiments should have been carried out. In this trial Blome heard of these for the first time from the Prosecution and testified to this and the opposite has not been proved. If these statements of Blome's had not been correct then the Prosecution would certainly have shown him the documents containing the facts of these experiments and where his own participation was alleged to have been proved. Nothing like this happened. Blome had no part in these experiments, obviously - whether they happened or whether they did not happen. And, in this connection

I should like to draw the attention of the Tribunal to the evidence of the witness Schreiber of the IMT which was read here as evidence. Schreiber who was informed about all these matters also certified that it never came to any action.

Your Honors, the last experiments which the defendant Blome is charged with are the Doryl and Polygal experiments. On page 36 to 41 I dealt with these questions explicitly and I draw the attention of the Court to the fact that with Doryl which is a poisonous drug no human experiments were made, and furthermore that the harmless and not dangerous treatment with Polygal cannot be described as experiment in connection with these proceedings and experiments of this kind were carried out only with volunteer subjects.

Your Honors, in concluding my brief I want to read the general issue as from page 44 of my brief, statements which I want to lay weight upon. I have written here:

Every Nurnberg trial is accompanied by strong prejudices against the defendants. The fact alone that they are called "principle war criminals" produces a certain prejudice in everyone, since one regards these people in the dock from the beginning as those most responsible for the unspeakable misery which the Hitler regime has brought over the whole world and specially over our Germany. This trial, the end of which is now approaching, has moreover repeatedly been called in the press the Nurnberg "trial of the SS-Doctors" and thus the whole embitterment we feel against the SS system is directed against these defendants even if they never belonged to the SS and never wanted to have any dealings with it, as was in fact the case with Dr. Blome, Dr. Ruff and several other defendants. To make the measure full, the most abominable crimes which are to be dealt with in this trial were committed in concentration camps; when speaking of this trial, one, therefore, automatically thinks of the numerous atrocities committed in the concentration camps. All the misery which this devilish institution brought upon the inmates arises before one's eyes; one sees the millions of poor people who were slaughtered there, one shudders at the thought of

innumerable victims who starved to death there or were worked to death and the indignation one feels about all this is automatically directed against each defendant who in such circumstances occupies the dock as a principle war criminal.

However, such a view would, in many respects, be unjust and could never lead to a verdict which could be justified before our conscience and before history. Certainly every German approves and welcomes it that crimes, committed during the past 13 years are punished with all severity. We feel no compassion for people whose hands are stained with the blood of the innocent and who, therefore, deserve the rope. Especially to-day when our people are suffering from the terrible consequences of millionfold murder we say: "An eye for an eye, a tooth for a tooth". Whoever committed murder shall lose his own life, he has forfeited it.

But this sentimental point of view entails certain dangers because it makes us forget too easily that in American Law also a defendant is regarded as innocent while the prosecution have not proved the guilt of this defendant beyond doubt. Only recently the verdict of the American Military Tribunal in the Milch case contained the sentence: "If the established facts can be reconciled with the guilt as well as with the innocence of the defendant, then his guilt cannot be regarded as proven". The same verdict of the American Military Tribunal II solemnly declared that the American flag in this court room guarantees just proceedings to all defendants and passes sentences only if the proof of their guilt is properly established; otherwise he must be acquitted.

If you only apply these principles to Blome then you will reach the conclusion that he, who never belonged to the SS and had nothing to do with concentration camps, in no way participated in criminal experiments or similar punishable acts, and should, therefore, be acquitted.

Furthermore I have another matter at heart, especially in my capacity as defense counsel for this defendant: Blome was Deputy Reich Physician Leader, he will, therefore, to a degree, easily be regarded as the

representative of the German medical profession during Hitler regime. Now, there is great danger that the entire German medical profession will be identified with its former leader Dr. Conti and with the crimes he was charged with during this trial; the German medical profession fears that those crimes which, in fact, were committed by individual doctors who may have rightly be charged, are to be taken as typical of the entire medical profession. Indeed, during the last months we could hear in the Press and on the radio that the entire medical profession was here in the prisoner's dock; unfortunately, by thus generalizing, the matter was presented as though the entire medical profession was corrupted and that the majority of German physicians had committed such kind of crimes or at least approved them, as stated here in the indictment at the trial. This conception would be wrong and unjust. The German medical profession numbered about 80,000 members and if we add the Wehrmacht physicians and the official physicians, one arrives at possibly 100,000 physicians. Now let us compare with this total number the small number of physicians and researchers here in the dock. There are altogether 20 men. Of what importance is such an insignificant number to the judgment of the entire profession? When out of 5,000 German physicians one single person committed a crime, it is impossible to draw a conclusion from these few exceptions regarding the behaviour and moral of the whole rank. And even if we suppose that perhaps another few hundred physicians and researchers had taken part in the experiment on human beings and in the "Euthanasia Action", not here in the dock, the number of guilty persons in comparison with the total number of the entire profession is still too small to consider the entire profession as criminal, and morally inferior because some individuals committed a wrong.

There is yet another point of view. It stands to reason that not all experiments on human beings can be excused and justified, not even during a time of total warfare nor in the case of a dictatorship regime and no decent person would ever think of excusing the way and manner in which the Hitler-State carried out the "Euthanasia-Program." However, it

is an incontestible fact that large scale experiments on human beings cannot altogether be avoided and are, in fact, carried out throughout the whole world, and that there are different view points about the problem euthanasia to a limited extent also in the circles of conscientious physicians at least then when this is done on a proper legal basis

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and when, in addition, full precautions are taken to prevent abuses. It must not be overlooked that the deterioration claimed in connection with this trial are connected *e x c l u s i v e l y* with the problem of experiments on human beings and with euthanasia, but that no accusations are made against the professional practice of the German physicians in any other respects, especially there are no accusations referring to the relationship between the sick patient and the physician whom he had chosen as a helper and confidant, to restore his health. This confidence between the attending physician and his patient remained completely untouched by this trial.

Your Honors, we Germans have our own opinion about our physicians, we know their conscientiousness and willingness to render help; we have been able to observe and appreciate especially during the war their readiness to sacrifice themselves; we know that the good qualities that made the German physicians and researchers a model in former decades, were not lost during Hitler's time and it would be a pity if the abuses which have been revealed and proved by this trial should serve to undermine the confidence of the German people in their physicians and expose them to the contempt of all civilized nations.

Individual researchers, who through ambition or a passion for research did not value a human being's life more than that of a rabbit should not be considered representatives of the German physicians profession, nor should those physicians of the concentration camps, who for lack of a conscience or for some other wicked reason made fatal injections on prisoners or tortured them to death be regarded as representative of the German medical profession. No: representative of a model German physician also during Hitler's time is the non-political, practicing physician, who, even if he did perhaps formally belong to the Party, strongly opposed from the bottom of his heart all kinds of violence and intolerance, who is closely bound to his nation and its needs, the practicing physician who had cared for his patients in the

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most devoted manner day after day and night after night during the time of total war and fearful bombardments, which is especially hard for a physician, or who as military physician served at the front far from home, from his practice, from his family, fairly sharing all the hardships, dangers and privations of his soldiers. And the surgeon who, as director of his clinic, operated and cured and helped from morning till night wherever he could help without having time to breathe, let alone to take part in political activity, he also is representative of the model German physician also during Hitler's time.

I do not know what verdict you will arrive at respecting one or the other of these defendants; but as defense counsel for the former deputy Reichsaerztchef I beg you to make it clear by your verdict that in judging the defendant if you must condemn him you do not condemn and defame the entire German medical profession but that the abuses which were committed, were individual acts such as, perhaps, happened in all professions during Hitler's time without necessitating a condemnation of the entire profession. These were individual acts arising perhaps partly from personal criminal tendencies of individual fanatics, partly from being connected with the excesses of a total war in a dictatorship of unscrupulous violence.

If beside the 23 defendants, Your Honors, there is a 24th sitting in the dock, invisible to our eye, it is not the German medical profession as was said in the German press, but the SS spirit of Himmler and of a dozen other murderers of millions of people. This spirit might have led a fanatic to forget his professional ethics and to commit crimes. But the entire medical profession remained sound and conscious of their duty.

May your verdict, Your Honors, not completely rob the German people of their confidence in their physicians, but restore it to them and I have no doubt that after the present crisis has been overcome and in more normal circumstances the German medical profession will prove

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to their people that in its entirety it never forgot nor will ever forget the professional ethical commandments of the Hippocratic oath.

So much for my plea in writing, Your Honors.

In order to come back to the case Blome, no guilt of the defendant has been proved, but only that he tried to help wherever he heard, help was needed and that he did so with success, although often endangered, and that he saved the lives of hundreds of thousands of people who, by Himmler Hitler and Greiser, had already been condemned to death, and I would, therefore, like you gentlemen of the Tribunal, to acquit the defendant.

THE PRESIDENT: I would ask the representative of the office of the Secretary General what translations of the arguments of counsel are on her desk, available to the Tribunal.

The Tribunal is informed that the translation of the argument in behalf of defendant Rudolf Brand is available, but I do not see his counsel present in court.

DR. MEYER (Defense counsel for defendant Gensken): Mr. President, as far as I know, the translation of my speech is in the hands of the translators.

INTERPRETER: We have it, Your Honor.

THE PRESIDENT: I am aware of the fact that the translators have it. Counsel for defendant Gensken may proceed.
Before opening the argument, the Tribunal will be in recess.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Counsel for the defendant Gensken may proceed with his arguments.

DR. GENSKEN (Counsel for the defendant Gensken):

Mr. President, Your Honors:

The defendant Dr. Gensken - the first and only director of the Medical Corps of the Waffen-SS - is the fifth man in the dock. If the order in which the defendants sit in the dock is supposed to express, purely superficially, their importance and the degree of their responsibility, this, in any case, is not justified as far as the defendant Dr. Gensken is concerned. This is not to say that the extent of his work, his missions, and his responsibility as medical director of the Waffen SS is in any way being minimized. But the field in which he worked and his responsibility lay in a completely different sphere and was entirely separated from the experiments which are under discussion and judgment in this trial.

As in the case of the first four and most of the other defendants, Dr. Gensken is not charged with the actual, active conduct of the experiments on concentration camp inmates; he is under indictment merely because among those who conducted the experiments there were persons who were allegedly under his command or because he is said to have had knowledge of the experiments at the time they were carried out and thus tolerated and aided them, if only tacitly, or at least not to have prevented them.

In this connection it must definitely be stated right away that the purely formal subordinate relationship never constitutes a punishable fact as such. In addition there must be either exact knowledge of the punishable acts of the subordinate in question, or the superior must have ordered the subordinate to take these actions. Only then and only in this single concrete case can there be any question of a punishable act, and

then it is not the subordinate relationship which is the essential and decisive factor - it is the giving of the order to take the action or knowing of it and not preventing it.

It is not necessary to explain that any one who in any way induces another person to commit a punishable act is liable to punishment as an instigator. It is also a generally recognized legal principle that participation in a crime can also consist of omission when action is not taken despite existing legal obligations to do so. But also it obviously assumes that the accomplice has exact knowledge of the criminal act of the actual perpetrator and that he wants to bring this act about if it were his own.

Whether these assumptions are present in the case of the defendant Dr. Gensken, who did not personally conduct the two experiments (sulpho-namide and spotted fever) with which the Prosecution charges him, will be determined when the evidence is considered.

As far as the person of the defendant, his position, and his activity as director of the Medical Corps of the Waffen-SS are concerned, the Tribunal can find these in the appendix to the plea.

The character of the defendant, as it has been described by the witnesses, and as it has emerged from his examination before this Tribunal, is illuminated by an especially note worthy statement of one of these witnesses. He calls Dr. Gensken the "Father of the Waffen-SS physicians". It is just this impression which points to his fatherly concern for his soldiers. The medical care was his most important principle and the guiding star for his every action.

Count I charges all defendants with having participated in a so-called conspiracy to commit war crimes and crimes against humanity.

On the basis of the decision of the High Tribunal, announced on 14 July, count 1 of the Indictment is to be eliminated, therefore I need not dwell on this charge.

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Whatever may be said in regard to conspiracy as a form of participation, I may draw the Tribunal's attention to the closing brief of the defense.

According to Count 11, No. 6 K and J, the defendant Dr. Gensken is charged with special responsibility for the sulphonimide and spotted fever experiments and with participation in these.

In this matter I would like to begin by stating that during the almost three months in which the Prosecution presented its case the name of Dr. Gensken was mentioned only rarely. Document No. NO-1657, Prosecution Exhibit 484, which was submitted by the Prosecution during the cross-examination of Sievers, was, to be sure, directed to Dr. Gensken to be handed to Professor Mrugowsky in his capacity as consultant in hygien in the Ministry of the Interior, but it has nothing to do with the experiments on human beings; it concerns itself, as its content proves beyond a doubt, solely with counteracting a typhus, epidemic in the concentration camp Neuengamme, which was located in the territory of the State of Hamburg. Even though the Prosecution submitted more than five hundred documents, the Prosecution was unable to produce a single document, a single letter, a single order or directive, which bears the signature or counter-signature of the defendant, or which was addressed to him in reference to the experiments. This fact proves better than many words the non-participation of the defendant in the experiments with which he is charged, especially when one considers the completeness of the documentary proof submitted by the Prosecution.

Considering the entire case of Dr. Gensken objectively one cannot escape the impression that Dr. Gensken is in the dock only because in addition to the Director of the Medical Corps of the Wehrmacht — Professor Dr. Handloser and the Director of the Medical Corps of the Luftwaffe — Professor Dr. Schroeder — they wanted to produce, for the sake of completeness, the Director of the Medical Corps of the

Waffen-SS in the person of the defendant Dr. Genzken.

To be sure, Dr. Genzken held the title of a medical director of a "Medical Corps", like the medical director of the army components. His jurisdiction was, however, considerably more restricted when compared to the so-called medical directors and the medical inspector. According to Himmler's express orders, Dr. Genzken was not allowed to call himself a "medical inspector".

As Director of the Medical Corps of the Waffen-SS he was an army medical officer and he was directed solely to build up the entire medical service for troops of the Waffen-SS and to supervise it responsibly. In contrast to the medical inspectors offices of the three components of the armed forces, the Medical Office of the Waffen-SS was never concerned with scientific research and plans, these were exclusively carried on by the Reichsarzt SS, Dr. Grawitz, and his agencies, Grawitz had express written orders from Himmler to that effect.

After the Prosecution had withdrawn the charge against Dr. Genzken arising out of Count II No. 6 K of the indictment -- experiments with poisons -- and No. 6 L -- experiments with phosphorus incendiary bombs -- further explanations concerning these two counts are unnecessary.

Thus, according to the indictment and the oral statement of the Prosecution, the remaining charges against Dr. Genzken contain only the sulphoniade experiments in the concentration camp Ravensbruck -- and the typhus experiments in the concentration camp Buchenwald.

In its closing brief the Prosecution has in addition charged Dr. Genzken with Dr. Rascher's altitude and freezing experiments, and the sterilization experiments of Dr. Claiberg. I must protest against the fact that now, after the submission of evidence by the Prosecution and Defense has been concluded, new special charges are brought up against the defendants. According to the indictment only the defendants listed in it specifically are charged with special responsibility for the experiments relating to them. The Defense presented the entire evidence

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under the assumption that the defendants would have to answer only for those experiments for which they have been charged with responsibility. Dr. Ganzken is not charged with any special responsibility for the high altitude or the freezing or the sterilization experiments. He can therefore not afterwards be charged with these experiments.

It seems as if the Prosecution is not convinced of the fool-proof quality of its evidence against Dr. Ganzken and therefore attempts at the last moment to produce further incriminating material against him.

Regarding the sulphanimide experiments, the following:

Although the prosecution's presentation of these sulphanimide experiments took almost three days, Ganzken's name was only mentioned twice.

Whether these two references can be construed an incrimination the High Tribunal can gather from my exhaustive exposition in the supplement to my final plea.

I shall here present merely a brief compendium of what is explained there in detail.

It is true that Dr. Ganzken found out about the sulphanimide experiments in Ravensbrueck shortly after Gebhardt and Fischer read their papers. His participation in them at this time, was no longer possible since the experiments had long previously been concluded. Culpable participation, however, either as instigator or as accessory in the way obviously intended by the indictment, is only conceptually possible if the participant is active at a time when the culpable act is not yet completed. Participation after the act is, at least for these experiments, out of the question.

Dr. Ganzken was not present when Professor Gebhardt and Dr. Fischer read their papers in May 1943 in the Military Medical Academy in Berlin; nor did he know anything of the delivery of cultures, etc. He did not himself order the experiments to be undertaken, nor was he ever present at the discussions between Gebhardt and Himmler. He never visited the

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concentration camp Ravensbrueck or the clinical station there. He was never informed by Professor Gebhardt and only long after the experiments were over did he find out about them, but here also only as a third person, and no more than the public at large. The prosecution could produce no letter or other document bearing on the Ravensbrueck sulphamide experiments which was signed or counter-signed by Dr. Genzken, or addressed to him, or in which he was even mentioned.

Since any criminal responsibility of Dr. Genzken for these experiments must therefore be denied, I ask that the defendant Dr. Karl Genzken be acquitted on Count II, No. 63.

What the indictment calls the "murderous" typhus experiments in Buchenwald have been portrayed by the prosecution as one of the most serious charges in the whole trial. In order to avoid unnecessary and tiresome repetition, I as counsel for the defendant Genzken, shall refrain from entering into the question of the necessity, admissibility, or inadmissibility of these typhus experiments. Counsel for the co-defendant Professor Krugowsky will dilate on this matter.

Under this count also Dr. Genzken is not charged with actively carrying out any typhus experiments, but is charged only because Ding was his subordinate and because he is alleged to be incriminated by an entry in the so-called Ding Diary. For me, as Genzken's counsel, therefore, the only important questions are: Did Dr. Genzken participate in any way in the typhus experiments, and did he have any supervisory duties in those experiments; or, at the time when the experiments were still being conducted and it might have been possible to interrupt them, did he have full knowledge of them, and, if so, was he in a position to have them stopped?

As the extensive evidence assembled in the closing brief shows experiments were decided on and ordered by Himmler or Grawitz without Grawitz's in any way participating. Then Himmler, on Grawitz's suggestion, commissioned Dr. Ding in Buchenwald to carry them out; this

commission was not communicated to the defendants Gensken or Professor Mrugowsky. Mrugowsky, who had repudiated the typhus experiments, was merely the Hygienic Consultant for the Reich physicians. This activity of his had, from the point of view of his duties as supervisor, nothing to do with his official position as Chief of the Hygiene Institute of the Waffen-SS or as Hygienic Office Chief in the Medical Service of the Waffen-SS. Dr. Gensken himself issued no orders or directives that typhus research experiments were to be undertaken in Buchenwald or elsewhere. Since Gensken issued no such orders to the Director of the Research Department, and since this order went directly from Himmler or Grawitz to this Director, namely Dr. Ding, Ding could to this extent never be Gensken's subordinate, but was the immediate subordinate of the person from whom he had received his research assignment, that is to this extent he was immediately subordinate to Grawitz.

Dr. Ding had a written order to carry out typhus experiments from Grawitz. The stamp of the experimental station in Block 46 read, "Reichsfuehrer SS, Typhus Experimental Station Buchenwald." Thus Ding was subject to supervision by the Reich Physician and not by the Chief of the Medical Service of the Waffen SS. The evidence presented, particularly the prosecution witnesses themselves, proved that the experiment station in Block 46 on the one hand, in which the typhus experiments were carried out, and the vaccine production station in Block 50 on the other hand, were completely separate entities in the concentration camp Buchenwald as regards location, personnel, organization and consequently also supervision, of both of which, however, Dr. Ding was in charge. Scientific research, planning and therefore also the institution and maintenance of research institutes belonged to the duties of the Reich physician. Consequently Ding as chief of the research institute, in other words of the experimental station, was his immediate subordinate. Only with regard to the vaccine production Ding was subordinate to the Chief of the Hygiene Institute of the Waffen SS and therefore would have been subordinate of Genzken, if this production had started before September 1943. That was not the case, however, since the institute moved to Block 50 only as late as August 1943 and the production there only began towards the end of 1943.

A supervision of the research institute in Block 46 or any other jurisdiction over the experiments therefore never existed for Dr. Genzken.

As Dr. Genzken never was in charge of supervision he never received any reports from Dr. Ding on his typhus experiments. All the reports by reason of competency went to Ding's superior, the Reich physician Grawitz.

The reason why Genzken was not informed by Grawitz about the experiments was thoroughly explained by me in the plea, where I described the position of the Reich physician vis a vis Dr. Genzken.

Dr. Gensken therefore could not know anything about the typhus experiments, or the sulfonamide experiments or about any other experiments, when planned, prepared or carried out, because he was never initiated by Himmler and even less by Grawitz in these secret research assignments. The Reichsfuehrer and the Reich physician considered him as a person *ingratus et incertus*, that is as an unreliable person, and he had neither the confidence of one nor the other. Grawitz with exaggerated jealousy defended his duties and competencies and carefully protected his secret always fearing for his position. He prevented any interference of Gensken by repeatedly telling Krugowsky that Dr. Gensken had nothing to do with the scientific experiments.

He furthermore could not even have given any orders for the execution of such scientific research work in a concentration camp. The research institute was located in the Buchenwald concentration camp and was administratively and economically under the administration of this concentration camp. Dr. Gensken had no medical authority to give orders within a concentration camp. The medical supervision within the concentration camp was Grawitz' duty.

Even if Ding during his activity in Buchenwald was several times in Berlin, it has to be taken into consideration that Gensken was not informed by him about these experiments and their details, and that therefore Dr. Gensken did not get any knowledge about the kind, the extension and the length of the experiments. The experiments began in January 1942. Dr. Krugowsky once informed Gensken officially about these experiments in April 1943, at a time when they were concluded to such an extent that a result on the vaccine production had been ascertained and Ding intended to make a public report on the experiments. This report was very brief. Standing up, Krugowsky reported about the amount of vaccine which was intended to be produced for the troops. Details about the experiments, such as artificial infections, the number of experimental subjects, and the number of deaths were not mentioned, and the defendant only got the knowledge

of these details during these proceedings.

The impression of Krugowsky's information on Gensken who had no bacteriological or serological training, was that of a regular scientific series of experiments. But he did not suspect that they were any criminal experiments on human beings. A reason and the possibility for interference therefore did not exist for Gensken besides the fact that he was not in charge of the supervision.

The entry of 9 January 1943 in the so-called Ding diary may, at first glance, seem to incriminate Dr. Gensken. The Prosecution thought they could infer from this entry that the research station in Block 46 belonged to the Hygiene Institute of the Waffen SS and thus, through Krugowsky, came under the Chief of the Medical Service of the Waffen SS, Dr. Gensken. What is to be said in general concerning the probative value of the Ding diary, the High Tribunal can see from the supplement to the final plea. There I have explained in detail that the so-called Ding diary can by no means be considered a regularly kept diary and therefore can have no full probative value. Nor does the entry of 9 January 1943 contain anything which particularly incriminates Gensken.

For, as is also explained in detail in my closing brief we are here concerned solely with the issuance of approval for a change of name for the vaccine production site, the suggestion having originated with Ding and not Dr. Gensken. This took place as late as fall of 1943.

Consequently the diary entry does not form a firm basis for the conception of the Prosecution, which is not supported by any other reason for suspicion. The foundation is removed from it completely by the extensive evidence which clearly shows that Gensken as Chief of the Medical Service of the Waffen SS was eliminated in every respect from questions of research work in Block 46. In this connection I refer to the sworn testimony of the witness Kogon and the before-mentioned affidavit of Joachim

Ruff (Doc. Krugowsky No. 109, Exhibit 103.)

If I can, in conclusion, state that during the war Dr. Gensken never entered either the concentration camp Buchenwald or the typhus research station or the production site, then I believe that I have every right to assert that Dr. Gensken did not participate in the planning and execution of the typhus experiments in Buchenwald or Natzweiler as leader, instigator, accomplice, or in any other capacity, and I therefore ask that he be found not guilty under Count II No. 6 J of the Indictment.

Under Count III all the Defendants are accused of a crime against humanity since the medical experiments listed in Count II No. 6 are also represented as crimes against humanity.

The Defendant Dr. Gensken can only be sentenced according to Count III, figure 11, if the prerequisites for such a sentence are given according to any of the counts under II, figures 6 - 9. Count III, figure 11 contains no independent criminal act, but only the statement that the experiments on human beings listed under Count II figures 6 - 9 are considered as crimes against humanity by the prosecution. Therefore punishment according to Count III, figure 11 is possible only in connection with punishment according to Count II, figures 6 - 9.

Since Dr. Gensken did not participate in the sulfanamide experiments nor in the typhus experiments as principal, accomplice or instigator within the meaning of the indictment therefore the possibility of sentencing him according to Count III, figure 11 is excluded, since independent punishment is not possible on this count.

In Count IV Dr. Gensken finally is charged with having been a member of the SS, and thus a member of a criminal organization.

According to the text of the IMT Judgment (page 16503 of the German record of the IMT) the mere membership does not suffice for a person to be included in the Declaration of criminality.

Either, the SS member can only then be punished if he is connected with war crimes or crimes against humanity through his direct participation or knowledge. Dr. Gensken by no means denies having been a higher SS leader and having joined the SS Verfügungstruppe voluntarily. Moreover, he was never a member of a resistance movement and does not want to produce material in his defense in this or similar directions. Only where it was necessary did he, in complete frankness and honesty and with that energy and touchiness peculiar to himself, fight for his points of view. When he was called by Himmler to become the successor of Grawitz as Reich Physician SS and of the police he rejected the appointment absolutely. Therefore, he was never appointed deputy of the Reich Physician Grawitz. Nor did he hesitate to put himself against the Reichsführer SS whenever his (Dr. Gensken's) honor was involved. And it certainly took courage, resoluteness and mature conduct to state in front of the large number of SS leaders: "Not even Heinrich Himmler can limit my sense of honor."

The High Tribunal will not have to consider in detail the question of SS membership since his membership could only then have an aggravating effect on his sentence if the defendant were to be convicted for the experiments with which he is charged. However, the evidence submitted by the prosecution does not suffice for such a conviction. Dr. Gensken cannot be sentenced by this Tribunal for his SS membership alone.

Mr. President, Your Honors:

I am approaching the end of my speech. I must emphasize again that Dr. Gensken was a physician and a soldier, that he had already served his Fatherland as a physician and a soldier during the first World War 1914-1918, and that, in that same manner he saw his life's work in medical service for the Waffen-SS. He has accomplished his duty and mastered the many difficulties which appeared during the war. He was not supposed to exceed this task, nor did he want

to do more, and actually he did no more than that.

His high rank and his position as medical chief of the Waffen-SS may not make it appear improbable, perhaps, that he was involved in the experiments in some form or other. If the High Tribunal will carefully examine and weigh the incriminating evidence of the prosecution and the material submitted in his defense, and I am firmly convinced that the High Tribunal will undertake this difficult task with its peculiar sense of responsibility and painstaking conscientiousness - then it will have to conclude, just as I must do, that the defendant Dr. Gensken cannot possibly have incriminated himself in the experiments as charged and that, therefore, he is not guilty in the sense of the other counts of the indictment.

Thus, Your Honors, I place the future fate of the defendant Dr. Gensken confidently into your hands and I am firmly convinced that you will pronounce a just sentence.

THE PRESIDENT: The Tribunal will hear from counsel for the defendant Rudolf Brandt.

DR. KAUFFMANN: (For the defendant Rudolf Brandt: Your Honors, the final plea which you have before you I have marked with red lines at some points. If the Tribunal will look at the plea they will see some red lines at the margin and only these parts are what I intend to read. I believe the Tribunal does not yet have copies but I have just handed them up.

THE PRESIDENT: The Tribunal has the copies, counsel, but I do not see any red lines on them.

The Tribunal now has the marked copies, counsel.

DR. KAUFFMANN: Mr. President I should like to point out that on pages 1 to 17 you will see some places marked with red lines but, at the moment, this afternoon, I shall not read these passages. My client has asked me not to read these passages although I should like to emphasize that he agrees with the contents of my statement but he has his own personal reasons. In these passages from 1 to 17 I have spoken of general principles and I have examined whether it is advisable to discuss these principles within the frame work of a final plea. But, opinions differ so greatly in this room, I believe I could say that truth could not hurt anyone, not even the defendants, because I believe that truth alone makes free. Now I shall turn to page 17 and I shall begin:

B.

1. Who is Rudolf Brandt, what do his former positions mean?

The indictment has characterized this 37-year-old man, who in the witness chair, stood out conspicuously among the rest of the defendants because of his clumsy defense, as an influential personality who had a considerable and evil influence on Hitler. This view of the prosecution seems natural to the casual observer, for Rudolf Brandt held the rank of an SS Standartenfuhrer, he was the head of the "Ministers' Bureau" and of the "Personal Secretariate of Hitler. As far as

the rank of SS Standartenfuhrer is concerned, I wish to point out that Himmler gave Brandt this rank so as not to subordinate him to other members of the General SS, whereas in the Waffen SS he only held the rank of Oberscharfuhrer which corresponds to the rank of Staff Sergeant in the Army. It would certainly be wrong to consider Brandt merely a stenographer, even a good one. He was, of course, more than that. But the fact that all those who observed him at closest range and for many years, considered the technical aspect of his job with Himmler as absolutely predominant, should be food for thought.

What all witnesses have unanimously testified to is their observation of a subaltern, intellectually insignificant, but morally clean personality, without great scope or resourcefulness, led astray and then without resistance. A descendant of working-class people, he came to Himmler for reasons of poverty and neediness, not out of personal inclination, received only modest salary, and remained without means to the end because he only wanted to earn what he needed to support his wife, his children and his parents.

If his unceasing diligence had not, already during his early youth, as a student, made him one of the best stenographers in Germany, he would have never set foot in Himmler's office. But he set foot in it and did not leave this dreadful place, even though he could no longer answer for his presence there. Brandt originally wanted to become a stenographer by profession and had to have an academic degree as required by regulations. Thus his university studies are connected with this ideal and did not originate from an particular scientific inclination. I shall not quote from the affidavit of Dr. Herrgossell but shall continue farther down.

Rudolf Brandt is not guiltless, but he has not incurred the death penalty, either.

His entire conduct is based on these characteristics; none of his signatures or other actions in the service of Himmler should be explained causally by assuming any criminality of his character. I believe him

that he realized the crimes only when he was put on trial. The deficiency of his conscience cannot be ignored, in view of the fact that not all of his signatures were executed without knowledge of the text and the contents of the orders issued by Himmler and passed on by him. But the reaction of that conscience was at that time already only a weak one; it did not rise in protest as a normal conscience would have reacted, and a person with a normal conscience would never have let himself be misused for signing such documents. Rudolf Brandt knew - starting from about 1941/42 - about experiments on human beings, carried out on prisoners sentenced to death whom, in Brandt's opinion, such experiments offered a chance of survival. Later on he must have known that there were only a few prisoners left who voluntarily seized the opportunity to receive a pardon and that therefore compulsion had to be used to make the experimental subjects submit to the experiments. I do believe him that he did not know, did not read, much less studied most of the incoming and outgoing papers of medical character, among these thousands of monthly incoming and outgoing papers coming under "personal-referat"; I hold it to be true that without exception he did not know the specialized medical reports and their details.

The testimony of Professor Ivy (Morning session of 16 June 1947) with which I agree namely, that even a layman can recognize the violation of medical ethics, gives me no reason to qualify my remarks; because the statement of Professor Ivy assumes, of course, that the layman did actually read the report and specifically those passages which are contradictory to medical ethics. At first glance the contradiction to the reported experiments can certainly not be recognized by the layman. But I should not dare to say that Brandt executed all signatures with closed eyes and did not know one of the documents, at least in its essentials, which the Prosecution has now submitted him. His defense on the witness stand, to the effect that he could not remember this or

or that document, not sufficient in itself does not say or prove anything about his knowledge at that time. How many of the documents of the Prosecution Brandt actually read, found correct, understood in their purport and approved, at that time and before he signed them, cannot be ascertained. If the statements of Brandt himself and of the witness K e i n e regarding the excessive workload and the pace of the daily working routine are accepted as true, as they are confirmed by the most varied witnesses in the affidavits produced by the Defense, then the eye of the judge, in order to judge fairly ought to leave the "council table" on which the documents are lying today, stern and inexorable, and go back to the time of the occurrence of these events.

Then he will notice also all the special circumstances which exerted a lasting and predominant influence up on Brandt. To bring about letters, orders etc. on one's own initiative and authority is one thing, to pass such documents on without knowledge or with only a slight knowledge of them or to give a merely technical help, is another thing. It is true that even a cursory knowledge is a knowledge, but it is limited to the passing moment, perhaps only minutes, and then the "conveyor belt" on which Dr. Brandt was working would again bring completely different events within his horizon. I shall now continue on page 21.

A German poet states a general truth in saying that in the first step we are still free, in the second we are slaves. We should trace the path which the 25 year old Brandt followed from the day on which he decided to become a member of the personal staff of Himmler. It is an old experience that a young man with a sound character is the more likely to attach himself to a powerful man if this man stands out before his inferiors as a model of good fellowship and industry. In this and no other way did Brandt regard Himmler through the years until he, particularly after the outbreak of war, appeared brutal even in

the eyes of his inferiors, devising individual orders of an inhuman nature together with others and thereby losing the character of being a just personality also in the eyes of Rudolf Brandt. Brandt does not inwardly approve of these new practices and orders of Himmler, but fulfills them by signing letters etc. takes dictations from which he must realize, in broad outline, the misanthropical course of Himmler. He remains silent. That is his guilt which cannot be denied. -

But it is based, in part, on a centuries old heritage of the Germans, namely the devotion in the face of the "order" of the superior - starting from the order of the non commissioned officer, up to that of the general, the king or the emperor -; and this devotion regarded such an order as almost sacrosanct and implied release from any personal responsibility. But much greater guilt lies with the person who devised and issued such orders that with a man like Brandt who passed them on without ever having influenced their origin or having even had the possibility of influencing their origin or execution.

The sabotage which Brandt might have been able to carryout would by no means have influenced or even impressed Himmler, Dr. Rascher, Dr. Ding, Professor Hirt, Professor Hagen and others.

As a result of the evidence I emphasize the fact that Rudolf Brandt was not one of the cynical brutal National Socialists. The witnesses for the Defense call him an "idealist".

Medivinalrat Felix Kerster, who knew him well, testified that Brandt did not even hate or feel enmity toward the Allies; on the contrary, he always dreamed of an understanding among all peoples on a peaceful basis. A man who committed crimes against humanity - and Rudolf Brandt is indicted as such - is congenitally a misanthrop. Hitler, Himmler, Goebbels, Bormann, and many others were such enemies of any human being who opposed them. An offender against humanity will be able to conceal only for a short while the lowness of his moral corruptness, because at some point even the most wily hypocrite will drop his mask. Here, too, one could think of Hitler, Himmler, and others; after all, they left documents, speeches, and other things to humanity, and they committed acts which - thank God - have radically destroyed the legend that they were honorable men. Nothing of all that applies to Rudolf Brandt, if I may mention him at all in connection with the foregoing. He, who only had a chance to occupy himself for seconds or minutes with these matters and who, like Brandt, had neither the education nor the knowledge of a physician or a scientist in this particular field, certainly deserves different judgment than he, who by profession and by the authority invested in him, performs experiments and conducts research. In the mind of a medical scientist ideas and plans of the sort shown in this trial develop only slowly and are only rarely born spontaneously. The scientist has a definite idea or at least approximately recognizes the significance of the experiment. To employ this way of thinking in the case of Rudolf Brandt should lead, at least to a certain extent, to a mitigation of punishment. If he had influenced Himmler in one of the criminal plans or orders under consideration here, if he had discussed them with Himmler, as it might well become the duty of the so-called private secretary, then I would not lose many words in Dr. Brandt's defense. But the situation is different here. There is no doubt that Brandt was a National Socialist. Whatever one's attitude towards the question whether according to program and character of National Socialism cruelty and contempt of humanity was the essential

part - which question should be answered in the affirmative, being the inevitable consequence of making national and racial values absolute - and whether this was recognizable for anyone - which question should be answered in the negative - Hitler at any rate continuously spoke about peace and the uninitiated learned about his devilish tricks only when it was too late and the terror made any opposition hopeless.

I continue on page 24

This trial too, and particularly the IMT trial, has uncovered one of Hitler's biggest secrets which was the main cause of his extension of power, namely, his mastery of keeping secret even the most extensive and most gruesome crimes. To be sure, the average German knew about the concentration camps and the complicity of the Secret Police. He also knew that the existence of the concentration camps and the system of treating the people in these camps was a still lower form of violence towards human beings than the militarism of the last years, particularly since Hitler's star began to descend and since he tried to free this instrument of any tradition. But details of the terror, of the executions, the liquidation of hundreds of thousands of people by gas, overwork, and other methods were known only to a few compared to the total of 80 million Germans; perhaps several thousand knew about it. No commandant of a concentration camp or his guards who committed such atrocities would have had any reason to public such cruelties; for they knew that it would have earned for them the contempt of the overwhelming majority of the German people. Secrecy then has a psychological aspect: Atrocities are committed by the perpetrator only with a loudly or at least secretly throbbing conscience. The conscience is never silent. Whoever commits cruelties feels guilty and avoids the light of day.

It is my conviction that details which took place behind the walls and the electrically charged wires of the concentration camps, the many thousands of tragedies, were never known to the large masses of the people.

Despite the fact that Rudolf Brandt spent approximately 13 years in
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Himmler's anteroom, he had no more knowledge of the shame of the concentration camps than many another official, except that he knew, since 1942, that prisoners were being used for medical experiments. According to his own plausible statement on the witness stand Brandt had never visited a concentration camp, none of the defendants or other doctors had ever reported to him a single detail - but the fact remains: Brandt lived in darkness as far as Himmler was concerned and he did see the salvation of his people and country in Hitler's program. Brandt had insufficient knowledge of general Christian concepts. He never came into personal or official contact with the Christian philosophy of life and therefore grew up with those ideals, which certainly, in their theoretical formulation had their good points, too, especially in so far as they propagated the renunciation of egotism as a way of life. Brandt did not realize that these ideals were based on a new paganism and for that reason alone were bound to lead to violence and slavery. Thus Brandt accepted Himmler's personality for many years, even during the war. This is natural, if one admires and respects a person. Brandt did no longer lead a family life, and if one looks closely, Brandt no longer thought or acted independently, but it was Himmler rather who spoke and acted through him. This is true, I beg you to remember, not only for the medical experiments incriminated here but also for matters completely outside the bounds of criminal law, with which he had to occupy himself very largely every day. I will not go so far as to say that Brandt was completely incapable of forming his own opinions and degrade him to the level of an unthinking tool, but it is nevertheless true that Brandt, already at the beginning of the war, was no longer a person of whom one could have expected any intellectual resistance against Himmler. Brandt had lost his own standard, to be more exact, Himmler had become his standard more and more, so that he could not master any resistance even when Himmler dictated the well-known letters, orders etc. or ordered Brandt to pass them on. Brandt's conscience, it is true, still rebelled as it did not agree with the experiments on humans which had been ordered; but we notice no reaction

in the sense of an open or hidden resistance against Himmler's view in these matters. Himmler gave the orders and the orders of this unbelievably powerful man completely overwhelmed a man still comparatively young who, by nature, was neither politically inclined nor a revolutionary, who was neither cruel nor ambitious, who saw his goal in life attained when he could put to use the only talent he possessed, namely, to write quickly.

I continue on page 26.

Some weeks ago sentence was pronounced against the former Field Marshal Milch. The Tribunal knows that it was not a sentence of death. I have studied this verdict and appreciate the conscientiousness with which the judges examined and considered all imaginable arguments of the defense. Is it permitted to establish a relation between the Milch trial and the doctor's trial, particularly with regard to the person of the defendant Rudolf Brandt? As far as each trial has its own peculiar history, any comparison is out of the question. As far as there is, however a similar train of thought in both trials, the defense counsel may establish such a relation. As a matter of fact, the judges in the Milch trial refrained from sentencing this man to death despite his extremely high position, despite the initiative and strong energy he applied in executing his plans, despite his numerous, incontrovertible remarks. This encourages me to intervene once more in Brandt's behalf and to ask the Tribunal for a mild sentence. In comparing the two personalities and series of acts nearly everything turns out in favor of my client, and I do not fail to recognize that Himmler's orders resulted in shameful excesses against the life and liberty of innocent people. Yet I do not hesitate to say that in the case of Milch a guilt can be expiated by a relative punishment, the punishment for Rudolf Brandt should not open the gate to eternity.

I conclude this discussion with a question which also played a part in the cross examination: Will Rudolf Brandt's good character description as shown by the affidavits of the defense become dimmed or even

influenced in an entirely unfavorable way by the sworn affidavits which he gave to the prosecution, but which are wrong in essential points?

I have to answer this question in the negative. The entire controversy about Brandt's own affidavits shows that this defendant lacked intelligence and will power and that his poor state of health evidently aggravated both even more. Brandt signed affidavits for the prosecution the contents of which were objectively contradictory to the truth and which he could have corrected on the witness stand after calm reflection and examination of the facts. The fact that Brandt was prepared at that time to sign affidavits for the prosecution which were in part objectively incorrect, and that he evidently did so without raising any serious objections, should give us pause for a moment, when the Tribunal examines the importance of his signatures, which he gave just as quickly in his "personal affidavit", perhaps even much more quickly. I emphasize here that I have no intentions of reproaching the prosecution. It only seems relevant to me to show in this example which came up here during the trial how quickly a signature can be given, even though the person giving the signature has not fully realized the importance of the statement signed by him at the time he signed it. Brandt expressed his opinion, partly even reported facts about some of his co-defendants which lack sufficient foundation without there being any reason for enmity, aversion or any other selfish motives towards his co-defendants. Brandt simply signed these affidavits under the erroneous assumption that his signatures confirmed things that were correct. In order to judge this peculiar situation it should be noted that it is not the statements which turn out to be untrue that are to be considered as a lie or, if made under oath, as perjury, but only the statements which are consciously false. In the case in question no other reproach could be made against Brandt except that he had made an objectively incorrect statement by mistake. I do not consider this a symptom of unscrupulousness of character.

Rudolf Brandt does not consider himself innocent. During his interrogation in the witness box he answered the question whether or not he considered himself guilty:

"I am honest and consistent enough not just to deny all guilt. If a more or less important stenographer becomes guilty because he takes down dictation and passes on such dictation to subordinate stenographers, or composes letters on orders from Himmler, then in this sense I am not without guilt... I realize that it is almost impossible for Your Honors to place yourselves in the position in which I found myself then. Your Honors could not do so even with the best of intentions since those conditions were unique and cannot be re-constructed; nevertheless; in asking for a just verdict, I would again and again refer to the three aspects because I myself am deeply impressed by the extremely weighty evidence brought against me. Today, in calm retrospect, viewed from the green table, so to speak...I would be heavy not to have signed these letters because they were contrary to my sentiment and convictions. I have, to date, not had to change this conviction."

(Page 4921 of the English transcript)

If, after all, Brandt's guilt remains, it is nevertheless quite evident that his person comprises both the good and the evil so that I could not but plead for a lenient sentence. The demoniacal strength inherent in a giant organism makes a mock of a man like Brandt who is weak and weak by nature, barely good enough to be its passive tool, an automaton, yes, though hardly still a man.

Only few are better able to judge the character of a defendant than his defense counsel because no one else can have a greater interest to probe below his surface. After many careful observations, I arrive at the conclusion that this man's spiritual constitution entirely conforms to the testimony deposed by the defense witnesses regarding Brandt's character and gentleness. He suffers the deepest remorse and is horrified at the human torments which emerge from the documents and confront him. He may well be the only man accused here who, in the witness box,

made statements which reflect deep shame at his own actions and manifest genuine repentance. By passing on orders and documents, etc. he somehow became a link in that fateful chain of events which frequently ended with the death of persons, and although he could not have thought of these himself, Brandt is ashamed of his actions. Should not the Tribunal also take into consideration Brandt's genuine regeneration when the question of the penalty arises?

Assuming it is proved what I have said regarding Brandt's personality, his rank, his position, his sphere and pressure of work, orders, etc., I consider it should be possible to see this man in a different light from that offered by the prosecution.

When a world is upside-down, the guiding spirits who feel responsible for regeneration must make justice the basis for the community. Then will follow peace and prosperity for which we Germans yearn after long years of barbarism. I could understand it if it was said that a tottering justice — for its sake a harsh sentence. Permit me a warning to those who may be disposed to trample again upon these mainstays of civilization.

Greater wisdom, however, abides on the side of moderation; after all, hardly any nation in this century can be absolved of all moral guilt. Permit me, therefore, that I conclude with three momentous words, guides to a rebirth of the world: Truth, justice, and clamancy.

Thank you.

THE PRESIDENT: The Tribunal will be in recess for a few minutes.

(A recess was taken.)

THE PRESIDENT: The Tribunal is again in session.

The Tribunal is informed that the translators have the transcript of the arguments on behalf of the defendant Sievers. The counsel for the defendant Sievers may now proceed with his arguments.

DR. WEISBERGER: (Counsel for the defendant Sievers)-Mr. President, I do not know whether the Tribunal has a written translation of my plea.

THE PRESIDENT: The translation is not available to the Tribunal, but the interpreters have the translation and the Tribunal will listen to the interpreters. Counsel may proceed.

DR. WEISBERGER: Mr. President, I have received the requisite number of translations and will be glad to give them to the Tribunal.

Mr. President, Your Honors

THE PRESIDENT: Counsel, if you will speak in a little lower tone of voice, it will be easier for the Tribunal to hear the interpreters.

DR. WEISBERGER: Mr. President, Your Honors, "Sievers - a key figure," a special case, "Sievers and his collaborators in the Ahnenerbe Society were completely possessed of the vicious and horrible doctrines of Nazism." -- These are some of the slogan-like epithets that the prosecution used when presenting the case SIEVERS. It is my duty to discuss the case of SIEVERS with dispassionate objectivity in order to offer you, Your Honor, the basis for a judgment doing justice to all the details of this case.

SIEVERS' life history and his professional career are being described in my closing brief, in which I quoted a number of affidavits testifying to his good character and his high ethical attitude.

SIEVERS met Dr. HIELSCHER for the first time in 1929 who with extraordinary insight recognized at a very early stage the dangers of National Socialism made SIEVERS an entirely reliable, decided and faithful follower of Dr. HIELSCHER. On his instigation SIEVERS became a member of the NSDAP. On his instigation SIEVERS in 1935 resigned from

his professional career in order to fill the position of a secretary general in the Ahnenerbe society. He did this in order to make possible the execution of the tasks against National Socialism that Dr. HIELSCHER had assigned him. Alone the fact that Sievers renounced a safe position and took over a duty that since the beginning was connected with the greatest danger for his personal safety must be appreciated as an act of greatest self-denial.

I only want to deal very briefly with Sievers' position in the Ahnenerbe Society that I have described in detail in my Closing Brief. I consider this necessary because the Prosecution has described Sievers as the authority in the Ahnenerbe and the "director" of the Institute for Military Scientific Research. The erroneousess of this concept is of decisive importance. The President and therefore the highest authority for both Institutes was Himmler. Under him was the curator and later Amtschef, Prof. Dr. Faust, Rector of the Munich university, who was in charge of the scientific direction. If there was such a thing as a supervisory right and a supervisory responsibility for the scientific departments, it was exclusively Dr. Faust's duty and not Sievers'. Sievers was the "Reich business manager" who was exclusively in charge of administrative duties, which, however, were limited to special fields. Then in 1942 on Himmler's order Rascher's and Hirth's institutes were unfortunately annexed.

Then in 1942, on HIMMLER's order, the "Ahnenerbe" -- until then exclusively culturally and romantically oriented -- was unfortunately joined to the institutes of Dr. RASCHER and Dr. HIRT and later coordinated with them in the Institute for military scientific research. SIEVERS' tasks remained exactly the same as before. They are designated exactly in HIMMLER's written order of 7 July 1942, and of 13 December 1942. Ordering research projects, giving orders, supervision and execution of research work, allocation of prisoners for experiments on human beings, all these did not belong to SIEVERS work. If yet there are papers in the documentary material of the Prosecution that deal with

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the allocation of prisoners, then these papers -- if at all -- were only forwarded to the competent authority by SIEVERS. On all activities of an administrative nature, reports were made to the Curator and Amtschef. Insofar as SIEVERS, considering the geographical distance between Berlin and Munich, signed the correspondence, the copy was subsequently countersigned by Dr. WUEST, with those few sentences I hope to have clarified the competencies and responsibilities within the "Anstalt" and the Institute for military scientific research. When Professor Dr. GEBELHART characterized responsibility within the "Anstalt" with the remark that SIEVERS did not belong there at all, his judgment was absolutely correct.

I shall now turn to comment briefly on the individual counts of the indictment. At first I shall deal with those counts, in which SIEVERS' participation does not exist, because the characteristics of objective factual evidence are missing.

1. SIEVERS is being connected with the malaria experiments of Dr. SCHILLING. No witness of the Prosecution could certify this. The documents submitted do not show anything except that SIEVERS wanted to release Dr. FICHTNER from his activities with Dr. SCHILLING, which was expressly requested by the former. The entomological station in Dachau, which belonged to the Institute for military scientific research had not the least thing to do with either Dr. SCHILLING's malaria research or with experiments on human beings, as witness Dr. MAY testified. For the rest, I refer to the state in my Closing Brief, pages 49-51.

2. With the sewer experiments that were carried out in the Concentration Camp Dachau by order of the Luftwaffe, SIEVERS had also nothing at all to do. On the basis of an agreement between the Luftwaffe and the Reichsfuehrung -SS, SIEVERS, in the course of a coincidental meeting on 20 July 1944, in a conference of at most 20 minutes' duration discussed with Professor Dr. BRIGLIENHECK, who had been

completely unknown to him until then, the cession of rooms in the entomological institute, which, moreover, was located outside the camp. SIEVERS had no knowledge of either the subject of the scheduled experiments, or of their further course. After 29 August 1944, SIEVERS was not in Dachau any more. (See Closing Brief, pages 63-66).

3. As proof of SIEVERS' participations in the experiments with epidemic jaundice, the Prosecution refers to an entry in the journal of the "Ahnenerbe" dated 3 March 1944. Generalarzt Dr. SCHLEIBER is requesting SIEVERS to arrange a conference with HEBEL about hepatitis. Until that day, SIEVERS did not know what hepatitis was, neither did he know later where hepatitis experiments were carried on, and what sort of experiments they were. (See Closing Brief, pages 67-69).

4. The typhus experiments carried on in the Concentration Camp Mauthausen were ordered via GOERING as president of the Reich Research Council and via the Inspector of Sanitation of the Luftwaffe. SIEVERS did not come into contact at all with the experiments or the director of the experiments, Professor Dr. HAGEN. Until 1946 he did not even know Dr. HAGEN. Also, at the time the experiments were conducted, SIEVERS was never at the Concentration Camp Mauthausen. Twice there were written requests for a certain number of persons for typhus immunizations forwarded to SIEVERS who was definitely not the competent authority for this. The express assurance was given that those immunizations were not dangerous. How should SIEVERS have obtained the knowledge that this was possibly a question of illegal experiments, which was emphatically denied by Dr. HAGEN, the director of the experiments? That the immunized persons were quartered in the so-called "Ahnenerbe" -- barracks in the Concentration Camp Mauthausen is no proof of the fact that the "Ahnenerbe" had anything at all to do with the happenings there. The building block opposite this barracks was still called "Chevauleger" barracks by the natives when in Germany for a long time already the "Chevauleger" -- as the light cavalry

of the old Bavarian army was called -- were non-existent.

Therefore, here too there was no connection of Sievers with the typhus experiments (See Closing Brief, pages 69-75).

5. If the Prosecution maintained that SIEVERS was connected with Biological Warfare, the so-called "M-Stoff" (M-Material), and with certain gas experiments, it still remains for the Prosecution to present proof of the fact that it was here a question of any sort of crime.

The assertions of the Prosecution have been completely refuted. (See Closing Brief, pages 94-96).

6.- Also, the indictment Sievers' for participation in experiments on the coagulation of blood has no foundation whatsoever. Sievers was merely to institute the manufacture of "Polygal" which was developed by Dr. Rascher together with the Dachau-prisoner Feix. Sievers did not participate in any form and at any time in the previous development of this preparation. If Dr. Rascher is supposed to have committed criminal offenses in connection with the development of Polygal, this fact was completely unknown to Sievers. (Closing Brief, pages 85-94).

7. Sievers did not personally participate in the Lost (gas) - experiments carried out by Professor Dr. Hirt, in Natzweiler. When the experiments were already concluded, and the persons experimented on were still lying in the experimental station for observation. He was in Natzweiler once for a short stay. There he talked to the persons on whom the experiments were conducted who, upon his questioning, answered that they had volunteered. This fact was verified by witness Nales. Regarding the question of volunteering of the persons experimented on, I refer to the statement of facts in my Closing Brief (pages 23-26a). The outward picture that Sievers obtained from the people experimented on, and the declaration that they had volunteered, could not possibly create in Sievers the conviction that medical ~~men~~, whose supervision was not in the least in Sievers' resort, would conduct illegal experiments. (Closing Brief, pages 52-62).

8. Sievers had knowledge of the low-pressure and low-temperature experiments that were carried out in the concentration Camp Dachau by Rascher together with Dr. Rosenberg or Professors Holzknecht and Dr. Tink. That these were criminal experiments cannot be assumed in view of the evidence. In any case had Sievers positive knowledge of any criminal activities, should they actually have taken place. In the course of the experiments which Sievers observed wholly or in part, all persons on whom

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those experiments were conducted stated that they had volunteered. What reason should Sievers have not to believe those assurances? What reason should Sievers have not to believe the frequently repeated declarations given to him by Himmler and other participants, that the people experimented on were volunteers? What reason should Sievers have to assume that the doctors assigned to carry out those experiments would disregard the principles of medical professional ethics?

There is nothing at all which lead one to assume that Sievers knew about the experiments carried on by Rascher on his own. On the contrary, from the affidavit of Dr. Fritz Friedrich Rascher we know with how much secrecy Rascher surrounded his non-controlled experiments. We also know from the testimony of Dr. Penzengruber (See Exh. 45, see Doc. Book II, page 10), how little trust Rascher put in Sievers; to impart to him joint knowledge of a secret was out of the question in view of Rascher's character. I have thoroughly demonstrate in my Closing Brief how to evaluate Sievers' activities in connection with Rascher's planned habilitation as a lecturer and his transfer into the Waffen-SS. I come to the conclusion that Sievers cannot be accused of criminal participation in the low-pressure and low-temperature experiments. The prerequisite for that would have to be knowing or being bound to know of criminal experiments connected with the animus auctoris vel adiutoris. None of those characteristic facts are present.

9. If I now touch on the Jewish skeleton collection, it is clear to me that prima vista Sievers' activities can be thought to constitute considerable material for indictment. But is this really so? Did the idea of making a Jewish skeleton collection originate with Sievers? No! The plan was discussed by Himmler and Hirt, and Himmler then ordered it executed. Then, at Easter 1942, Sievers tried to influence Himmler to desist from connecting Dr. Hirt's department with the "Ahnenerbe", Himmler pointed out the commissar order ("Kommissar arbeit") which had been unknown to Sievers until then. To this commissar order Himmler added the explan-

ation that Soviet commissars had committed inhuman cruelties on German soldiers and civilians innumerable cases. Sievers had never been personally acquainted with war conditions in the East; can he be expected to know that an order given by the Chief of State and Commander-in-Chief of the Wehrmacht was illegal? To answer this question in the affirmative would mean to charge everyone who held a subordinate position with a responsibility which he simply cannot be expected carry, were it only for his lack of knowledge in the fields of international and national law.

The persons designated for the skeleton collections were selected in the Concentration Camp Auschwitz by Dr. Boyer on orders from Dr. Hirt. To interfere with this part of the execution of Himmler's order was neither in the power of defendant Sievers, nor did he have an opportunity to do so. Nor was he ever in Auschwitz, and did not exercise influence of any sort on the operation Dr. Hirt or Dr. Boyer. Now, Sievers signed the letter drafted by Dr. Boyer, dated 21 June 1943 and addressed to the Main Reich Security Office (Reichssicherheitshauptamt) which contained material on the transfer from Auschwitz to Natzweiler of persons who had been selected for liquidation. (Pro.Exh. 121). Is there to be sure in this letter any supporting, furthering or favoring of the skeleton collection planned by Himmler and Dr. Hirt? In my Closing Brief I have thoroughly outlined my opinion on this question. The transfer from Auschwitz to Natzweiler of the people selected by Dr. Boyer had a long time ago been decided upon in the plan Himmler-Dr. Hirt. Gluecks, who was the competent authorities for all matters concerning concentration camp, and the Union Reich Security Office (Reichssicherheitshauptamt) had already received their orders from Himmler a long time ago. Could there have been no skeleton collection if Sievers had not written the letter of 21 June 1943? Only he who is completely ignorant of the order machine of the NS-regime will first it difficult to give reasons for the decided "NO" that must answer the question posed

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above.

In September 1944, Dr. Hirt asked the "Ahnenerbe", what should be done with the skeleton collection. Sievers forwards this inquiry to the next authority. The decision is made by SS-Standartenfuehrer Bannert of the personal staff of the Reichsfuehrer-SS. Sievers forwards these directives. Thus, here too there is no independent action on Sievers' part, quite analogous to all other cases. Even already on the basis of their occurrence, which, in itself, is completely negligible, it can be noted how inclusive the prosecution's attitude is that Sievers was a person of authority. Evaluating the evidence and the legal questions arising therefrom purely objectively I came to the conclusion that in the matter of the skeleton collection Sievers cannot be regarded either as principal or as accessory or as abettor.

10. Regarding the question of conspiracy I refer to defense counsel's statements in the plenary session of 9 July 47. I refer to these statements on this subject in my closing brief.

11. Sievers' membership in the SS, an organization that has been declared criminal, is a fact, objectively speaking. But for subjective reasons, which I shall now discuss, he cannot be condemned for this.

May it please the Tribunal, let me remind you of the part of my presentation which dealt with Sievers' participation in the resistance movement against the Nazi regime.

When the defendant Sievers claims to have been active in a resistance movement, he is not thus attempting to achieve a mitigation of the sentence that may be passed against him. Rather, I am of the view that this activity must inevitably lead to his acquittal, even if the Tribunal, contrary to all expectations, should be inclined to the opinion that Sievers took part in the incriminating experiments.

I first intend to state my attitude toward a number of legal questions which are recognized in the penal codes of all civilized peoples and at all times.

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The Tribunal's task here is not simply to apply a specific paragraph, but to extract from general juridical and legal principles the rule which reveals and creates new law for newly arisen cases.

It is a matter of course that in first order I am appearing in behalf of my client, but you, Your Honors, are not passing judgment in your verdict merely on this defendant. Your verdict has a much more inclusive, universal, and I should like to say, world embracing significance, over and beyond this individual case. For this is the first time that a decision has to be passed regarding the actions of a member of a resistance movement in a trial of the significance of this one.

And therefore your verdict is fundamental and establishes a precedent for the present, for many many other defendants who stand and will stand before you and other tribunals. The implications of your decision extends also into the future for thousands and tens of thousands of human beings who sometime or other may find themselves in the position of combatting some criminal governmental system with means similar to those used by Sievers. There are still autocracies and totalitarian dictatorships on this earth, and one needs but little political perspicacity to see that future dictatorships can bring about further international imbroglios and wars of the most terrible sort. And in the future also courageous men will again and again be needed who for the welfare of their people of their nation and of humanity will hurl themselves against this danger. And for these fighters and groups of fighters your verdict will be a guide. You are passing judgment in advance on the future possibilities and radius of action of coming resistance movements against criminal governments. In your judgment you can apply a brake to such movements; but you can also afford them the certainty that is necessary for their hazardous undertaking and for their success. How and where would you in the future again find such helpers, if they had to reckon not only with the immediate danger but with the additional danger of being called to account by the very people

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for whom they had striven, And therefore, Your Honors, in your judgment in the case against Sievers you are taking upon yourselves a responsibility before the entire world and for all time, a responsibility with which a tribunal only seldom finds itself confronted. But on the other hand you can also say with pride that in your judgment you have done the world, in its struggle for peace and justice an incalculable service.

And therefore also, the reasons for your judgment against Sievers are so prodigiously important, much more important, in the grand movement of world history through time, than the petty case against Sievers can ever be. And I myself am obliged to deal with these legal problems at somewhat greater length.

Of course the member of a political resistance movement can only then refer to his resistance, if this resistance itself is lawful. This will not always be the case; for political crimes and similar deeds committed for political motives are and remain crimes. Whoever removes his political adversary for the sole reason of taking his position himself or opening the way to his partisans acts unlawfully and is punishable. This changes, however, in the moment when it is not merely a political dispute that is being settled by murder, when it is rather a tyrant, whose reign is entered with bloody letters in the annals of mankind, who has finally been prostrated. Here a recognized reason justifying his deed will come to the perpetrator's aid. And this is self-defense.

According to Article 53 of the German Criminal Code an act compelled by self-defense is not punishable. Self-defense is such a defense as is required to repel an imminent unlawful attack on oneself or another.

But these principles are not only German legal regulations. They are common legal heritage of all peoples and all times. They are in line with human sentiment to a large degree and are called "the great

law of defense." They are to be found already in Roman law as: *vim vi repellere licet* and have been taken over enthusiastically - as stated by Harten in Par. 613 - by English Common law and by American law. Every individual is authorized to wear off injustice from himself or from another person with all means at his disposal. The struggle against a criminal government, menacing world peace, preparing aggressive wars and about to plunge the world into immeasurable misery, useless and needlessly, out of lust of power and arrogance, must be regarded in the same light, the struggle and resistance against such a government and leadership is lawful and permissible, regardless of the means with which it is being conducted. Indeed since the end of the war more and more people have taken the attitude that such a struggle is not only lawful and permissible but the duty of every individual. Is it not a fact that the collective guilt of the whole German nation is that it has viewed the activities of the Nazi regime without doing anything about it, at the most with their secretly clenched in their pockets?

Murder and manslaughter, bodily injury and deprivation of liberty committed against the responsible mainstays of such a system are acts of self-defense in the interest of peace and humanity. They are lawful and not punishable, they are duty if there is no other remedy.

This question as to the lawfulness of political murder and the duty to commit political murder has at all times been pondered about not only by lawyers, but also by a wide circle of poets and philosophers: Friedrich von Schiller justifies the murder of Gessler as the last desperate attempt to gain liberty from servitude with no way out. Thus the murder of a criminal tyrant in addition to being justified legally is also valued highly in a moral sense.

It may happen sometimes that of necessity it is not the real attackers who suffer injury. A person warding off an attack may be forced to affect a third innocent party. Provision has been made for this case also in Article 54 of the German criminal Code; it is called necessity. Article 54 reads as follows: "An act does not constitute an offense, if apart from instances of self-defense, it was committed in a state of necessity in order to rescue the perpetrator or his relative from imminent danger to life or limb, provided the necessity was caused through no fault of the perpetrator and could not otherwise be averted."

The legal codes of all peoples and all times had to take a stand on this problem of two legally protected interests in conflict with each other, which can only be solved by violating or even destroying one of them. Law cannot insist with extreme consistency that the individual should respect the rights of others under all circumstances and in every situation and sacrifice his own instead. A Frenchman has the following to say with regard to this point: "This theory is admirable for saints and heroes, but it is not designed for vulgar humanity." *Quod non est licitum in lege, necessitas facit licitum* is a saying in Roman law and Rossi, a French jurist says:

"The act is excusable only when the agent is yielding to the instinct of self preservation, when he is confronted by imminent danger, when his life is a stake." An old German legal proverb says: "Need knows no law." Finally American Law also deals with this problem under the name necessity-- (Wharton Par. 642) - a literal translation of the German expressions "Not" or "Notstand". Thus under the plea of necessity a shipwrecked person may push his companion in misfortune from a plank which cannot support both. Applied to resistance movements against criminal governments, these principles mean that even third parties may be hurt, if there is no other way out, if the "Not" "Necessitas" necessity it is required imperiously and unavoidably.

Your Honors are called upon to reduce the principles of selfdefense necessity to their common denominator, to apply them to Sievers' case and thus to insert them among the unwritten rules governing international relations of public and international law. Anglo-Saxon legal thinking and the principles of natural law are other legal sources that may be of value to you in arriving at a judgment.

And now I should like to turn to Sievers' case particularly. The following points are of decisive importance in judging the acts of this:

1. Did a German resistance movement exist at all?
2. Did Hielscher's group belong to it?
3. Was this group to be taken seriously and what were its aims?
4. Was Sievers a member of this group and what were his tasks?
5. How did he conduct himself in carrying out his tasks?
6. Did other possibilities exist for him?

It has frequently been asserted that there was no German resistance movement. But, resistance in Germany did exist. I must, however, admit that the question: "Where then was this resistance?" suggests itself to a person not knowing conditions within Germany, particularly during the war. I also have to concede the fact that the public as a whole has not heard of much more than Stauffenberg's bomb plot of 20 July 1944, with

its tragic results. But a person asking this question would completely fail to recognize under what conditions the whole resistance movement was forced to work against the Nazi regime. He forgets that he too, did not have any idea of the existence of the group around Stauffenberg until this fatal day of 20 July 1944. All the more I am compelled to give a compact presentation of conditions with which everybody was faced who opposed the Nazi regime.

The authoritarian regime aspired from the very start to gain complete control over German men, every German woman, over children and over the aged, so as to instruct them along the lines of the new form of government. The demand for absolute authority did not recognize personal freedom. It did away with professional and industrial organizations, with cultural and social institutions, so as to revive them partly in a different shape, completely subjugated to the control of the Nazi regime.

On the other hand the battle also set in from the beginning. Nothing would be more wrong, of course, that to imagine that this battle could be fought quite openly, with a great deal of publicity, with the use of physical violence, with fire arms, bombs, war and war cries. Not even the trade unions, the most highly organized and determined opponents of the new regime could afford to adopt this type of warfare in 1933. This regime held the entire public machinery in a firm grip and gained an ever increasing control extending to the spheres of private life, by means of the security service of the SS and the Gestapo organizations. The flexible regulations of the Heimtückegesetz allowed for sentences of severe terms of imprisonment even in the case of the pettiest derogatory remarks. Many of harmless remarks caused political discrimination and the constant danger of being taken to a concentration camp.

No press could have been found to rebel against the tyrants. If leaflets were secretly circulated whose contents defamed the Nazi regime the entire machinery of police, Gestapo, the SD etc. was mobilized.

Possession of arms was certain evidence of acts high treason and resulted in the death penalty for the careless. In addition there was a widespread spy system affecting people's every move. One had to be on one's guard even with one's closest relatives and one's children.

These few words on conditions inside Germany are necessary, however, as a reply to the absurd question the witness Hilscher was asked in Stockholm, namely, "Why do you not speak in public?"

Most striking in their resistance were probably the two great Christian faiths. That was not preached from the pulpits against the Anti-Christ and his false prophets, how many clergy of all denominations went to prison, to penitentiaries, concentration camps, even to death. Of course, the Churches could propagate their views with less restraint than others. After all they did not want to have a part in the overthrow of the system by sheer force by the killing of its leaders, and representatives, by armed battle. These resistance groups outside the Church, however, which had come to realize that without using force the dictator, National Socialism, could never be brought to fall, those who were not held back by the ideological restrictions and inhibitions of the Churches, they must not make themselves known before the day of action dawned. Up to that time they had to keep silent. "Never speak of your aim, but always think of it." If they had forgotten this rule they would have been betrayed by spies and oppressed by the Gestapo. If the Stauffenberg group had not acted in the same way, who knew about it? Who knew of its existence before the bomb burst in Hitler's headquarters on July 20, 1944?

The same was the case with all the other resistance groups which unfortunately no longer were in the possibility of acting and part of which had been traced up and secretly killed. The fact that all of them existed is proved, however, by the works of Ford and others.

But downright classical witnesses are the numerous bloody victims sent to concentration camps to death by the Gestapo.

Among these groups was also the group around Hielecher of which the defendant Siemers was a member.

This Hielecher group existed it was a fact, it was an action. Hielecher himself is an unimpracticable witness for that fact. It was the reason for his being under arrest for 3 months subsequent to the 20th of July 1944, for his being one of those who were to be hanged. But Hielecher's underground activity is beyond that substantiated under oath by many equally reliable witnesses. There is, for one, the political emigrant for Dr. Borkman who at least since 1928 was active in the struggle against National Socialism. He had known Hielecher since 1928. He speaks of Hielecher's hostility against National Socialism, of his "sharp attitude at that time, done a great deal of negotiating and conspiring together with Hielecher. Hielecher expounded to him his methods of action. Later on, during the time of his exile after 1933, Dr. Borkman still watched Hielecher's activity from abroad and convinced himself again and again; Hielecher is carrying on. Such a testimony coming from an emigrant deserves our credence. Another witness who never lost contact with Hielecher is Dr. Topf who himself was active within the resistance movement. He, too describes Hielecher as a violent opponent of National Socialism, and untiring worker and fighter. In addition there are the many affidavits submitted by us and which belong to this context. The fact that Hielecher did not play a bigger part in public does not disprove his activity in the opposition. Camouflage to the hour of decision was the supreme commandment for him also, and Dr. Borkman considers it a high achievement that he succeeded in this to such a high degree. Siemers was a member of the Hielecher group.

This, too, cannot be any longer subject to any doubt. Apart from the vast amount of testimony given, the whole personality of my client speaks against any National Socialist inclinations on his part. His whole character and temperament and his career were bound to make him a decided opponent of the Hitler system of oppression, murder and terror. His very origin, the interests of his youth took him into an environment which was as far as possible removed from national-socialistic ideas. He, the son of a director of church music, was engaged in studies of history and history of religion. His character make-up led him to the Wandervogel and to the Boy-Scouts; these were interests, activities, inner attitudes which were ridiculed and slandered and violently fought by National Socialism. Everyone who has testified to Sievers' character either in the course of direct examinations or by affidavit knows him as a sincere man with high ideals of deeply felt humanity and a strong sense of right and justice. If you consider this description of Sievers' character given by well-known anti-fascists along with the frequent support which Sievers, as has been proven, gave to the victims of nazism, only a small step is needed to make us certain of the fact that Sievers took part in a resistance movement.

The prosecutor may say: "I don't believe all that; for Hielecher and Sievers did not do anything."

This would be wrong, Your Honors! Other resistance groups have had the same misfortune of not getting a chance to deal a blow. The witness Hielecher has stated the reasons very clearly why, after the unsuccessful plot of 20 July 1942, nothing could be done for a while. Due to the temporary elimination of the Wehrmacht from the plan of Hielecher and his comrades everything had to be started again from the beginning.

Just what was the position of the defendant Sievers within the Hielecher group and what were his tasks? Hielecher himself gives us the

answer: Sievers had two tasks:

1.) Obtaining information from the immediate entourage of Himmler, as basis for the assignment of all the opposition forces as to place, time and manner;

2.) Sievers was not only a spy and a scout; he was appointed, and was ready, to liquidate Himmler at the moment of action;

These tasks demand a double legal clarification:

a) Were they themselves permissible, legal or even in keeping with duty?

The principles which I have developed concerning the concepts of self-defense in the field of political warfare present the answer to this.

b) What measures was he permitted to use? How far was he permitted to venture into this field which was punishable in itself? To what extent could he implicate third parties who were not involved, but even victims of National Socialism?

The rules of necessity point out the way to a decision and solution of this problem.

If I now turn to the first problem, I can deal with it relatively briefly.

According to everything that we know today, it is an incontrovertible fact that Hitler and his accomplices terrorized the German people and the entire world in a criminal manner and with criminal means, that from the very beginning they constituted a direct danger to peace and to all civilization, and that finally the worst fears on this score became a horrible reality. The primary condition for defense, self-defense, is beyond all doubt, the following: an imminent illegal attack upon the highest possessions of mankind. This was, to use the language of the German Reich Penal Code, the "danger" which was to be "guarded against".

We know, however, that this defense could not be carried out by the normal means of a democratic parliamentary system. I have described

the truly devilish organization by which the application of these means had been made impossible. From this, it becomes apparent that only the elimination of Hitler and his confederates was the one way by which this system could be broken and smashed. Less stern and violent means were not available.

With that, however, the Hiescher Plan to remove Himmler had become sanctioned and obligatory for anybody who had the opportunity to act according to it. According to the statement of Hiescher and other credible witnesses, it cannot be denied that Sievers received that assignment.

If the removal of Himmler was justified, so was also, by the same token, the preparatory activity as a spy and informer which went with it.

Before turning to the answer to the question as to how far Sievers' activity could affect third persons, I feel it necessary to draw a short outline of Hiescher's plan of action and the position of Sievers.

It was not in vain that Hiescher gave us ample information on this subject. We have also heard other witnesses as Dr. Borkenau, Dr. Topf. Sievers gave us a clear outline of his tasks. All these depositions show a degree of agreement and unanimity which excludes any doubt in their truth.

Hiescher was one of the first of those few men who realized that action against the system could come only from the very ranks of the NSDAP. He had realized that only the removal of the top men of the NS-regime and the seizure of the government right at the top held out any prospects of success, and that no hopes, no hopes at all, should be placed upon a revolutionary development coming from below, from the rank and file of the people. Such a revolution would, within a short time, have been drowned in streams of blood without achieving anything.

This realization, however, made imperative four groups of measures

upon which Hielacher has elaborated on 15 April:

(a) Preparation of the action by a well-camouflaged organization of trusted representatives and spies within the NSDAP, the Trojan-horse policy.

(b) Placing qualified men of courage as closely as possible in the entourage of leading personalities of the NS among which Himmler was the most dangerous one.

(c) Removal of Himmler and other top men upon a given signal.

(d) Seizure of the government by an organization kept in readiness for this purpose.

Hielacher also had realized that despite a certain freedom of action for his activists, success could only be hoped for if and when each man obeyed his orders exclusively and in a spirit of strict discipline. Only thus could he keep everything in his hand and give the signal at the proper time. And in this connection I must emphatically stress the fact that Sievers, in accordance with that necessity of discipline, acted always in full agreement with Hielacher; that he secured orders from Hielacher at every important moment after giving him an exact situation report, and that in this manner Hielacher was kept closely informed about the game in which Sievers was involved and the hand he played in it. Sievers was nothing but the tool in the hand of the head of the movement. Therefore, I want to submit to the court that your verdict on Sievers will fall with the same weight upon his guiding spirit, Hielacher. Hielacher will be sentenced with Sievers, he will be acquitted with him. And thus Hielacher could at the conclusion of his examination declare with the same courage which he showed when deploying Sievers and other men of his in dangerous positions - that he not only accepted but demanded to bear the sole responsibility for everything his follower Sievers was charged with in this trial.

Hielacher gives the following outline of Sievers' assignment:

He was to work within the Trojan horse, i.e. in the disguise of a zealous and enthusiastic collaborator, by

- (a) acting as an informer and spy,
- (b) using his influence in order to place others for the same purposes in similar positions or in positions where their work would not be interfered with,
- (c) covering up for, or if possible, rescuing members of the resistance movement when they were in danger;
- (d) and finally, removing Himmler when the moment for action had come.

This last point, however, was the very core of my client's assignment.

Everything else was subordinate to this aim, this order, and was subservient to its preparation and furtherance. From this point his whole conduct can be grasped and his actions judged.

And what did Sievers do within the scope of this assignment?

I can't, at this moment, reiterate in detail the arguments I elaborated upon in the first part of my plea. I have arrived at the conclusion that Sievers did not act as a participant in or accessory to the crimes under indictment. However, if one does assume that Sievers has to be found guilty on some of the counts as charged by the Prosecution, it will be my task to find the justification of this conduct before a forum of natural law, as transcending human law, and to place it before the court.

What is the explanation for the fact that Sievers remained at his post even after 1942 when the society "Ahnenerbe" became involved in medical experiments which possibly were to assume a criminal character. We should keep in mind that Sievers was assigned to effect the removal of Himmler and that he was the only person within the Hielecher group who had a chance of success. Thus he held the actual key position within the Hielecher movement, a position on which depended success or failure of the whole action.

His destiny was, from the beginning to the end, only in his hand; for Himmler was the most dangerous man in the Nazi system; since he as the chief of the German police and commander of the home army had all domestic armed forces at his disposal and thus was in a position to crush every uprising in its earliest stage. Himmler was able to run the government without Hitler, but not Hitler without Himmler. The removal of this man therefore came first, both in importance and in urgency. If the person of Himmler was overlooked or if he succeeded in escaping somehow, everything else became problematic. We may therefore use Himmler's importance as a yardstick for the importance of Sievers who was kept ready to strike in the former's closest entourage. To ask the question whether that position could be abandoned, would mean to answer that question in the negative.

Sievers was aware of the far-reaching consequence of such a decision. In this moreover he became involved in the deepest inner conflict of his life. It was a question of avoiding the greater of two evils and accepting the lesser, or of circumventing both. The latter would have been the easiest way out. The fact that Sievers became involved in this conflict bears witness to his sense of responsibility, his feeling for right and humane value. To be sure, he was not able to handle that conflict by himself. Too much depended on his decision, affecting not only himself but the whole of the resistance movement. We must put ourselves into the place, into the soul, of a man who, on the one hand, felt the pressure of a revolting inner abhorrence of the things which he felt were in the making; but who, on the other hand, was aware of the fact that he would no longer be able to complete his task at the post assigned him, if he allowed himself to be guided by his personal feelings. Perhaps Sievers would have had the possibility of disappearing from his post without much ado and with no great disadvantage for himself.

Could he not have retired to a position with some harmless research undertaking? But by doing that Sievers would have become a deserter.

In this inner conflict he turned to Hielscher, and Hielscher decided after thorough deliberation and consultation:

Sievers remains at his post!

For it appeared impossible to forego the position in the entourage of Himmler. If Sievers left his post, he had to be placed in another position close to Himmler, or to be replaced by another man with the same tasks. Was that possible? Wouldn't he have arrived at the same crossroads again and again if he remained close to Himmler? Was it to be expected that another man would succeed, was there time to wait until he could succeed? Was Sievers not likely to arouse suspicion even if he took all possible precaution when motivating his resignation? For it had been stark lunacy to do it openly and under protest. Just imagine the danger in which such an act would have involved himself and his comrades. And who would have had any advantage from his resignation? And, another question: If Sievers' resignation could have prevented the human experiments at all, that still would have been only an insignificant partial success. As far as the entity of the great objective, the removal of Himmler and the NS-regime, was concerned, nothing would have been gained, nothing but a further postponement of the decision or altogether the impossibility of reaching such a decision owing to the loss of the actual key position. The consequence would have been still more victims of the NS-regime. Thus a partial success had to be sacrificed in the interest of the great objective.

If the members of the court will review all these questions, in their minds, it will become dear beyond any doubt that the decision taken by Hielscher was the only one possible.

And with that I arrive at the final, most important part of my defense plan, the question:

What was the line of action Sievers had to take at his post?

Doubtlessly he had to make certain concessions, i.e., he had to adjust his behavior to that of the persons he planned to remove. Every spy

has to use camouflage and I am not telling a secret if I say that many a spy has donned the enemy's uniform in order to complete such an assignment in war times. It is a known fact that the French general Giraud made good his escape from a German camp in 1942 wearing the uniform of a German General.

Everything Sievers did - his membership in the NSDAP from 1929 to 1931, his renewed membership in the NSDAP and SS at a later time, his high position within these organizations, his tenure of office as the business manager of the "Ahnenerbe" and his acceptance of a high rank in the SS, - was no doubt part of the camouflage which according to Hielecher, Dr. Borkenau, Dr. Topf and others was a necessary prerequisite, a camouflage used in the line of duty for the completion of the task of the defendant Sievers.

Obviously, no one will try to maintain that this camouflage which were used to approach a lawfully approved, eye, even desired aim, are as such criminal and non-permissible. The fact that the outward membership in the SS held by the defendant Sievers is therefore ipso facto excused by its purpose of camouflage. He can not be blamed, either, for posing at certain occasions as a good Nazi party member. That was part of his duties according to Hielecher's orders.

The career of the organizer or of an activist in the German underground movement would have found an immediate end if he had not acted a Nazi in every word and in every movement.

I have to give even greater consideration to Sievers' consent and his further participation in the experiments with human beings and in the organization of the skeleton collection which involved injuries to third persons:

Only here the question arises: where are the limits of emergency, if it involves actions which in themselves are criminal acts. The answer to this question is the main point of the trial against Sievers:

And here the legal systems all over the world have the same principles:

The right violated by an act of emergency must be relatively more valuable than the protected or saved right.

What rights are competing with each other in the case of Sievers? On one side there is the existence of the civilization of the world, peace on earth, humanity, life and existence of millions of people who, through Hitler's criminal domination, were directly endangered or already violated. The new international law calls such actions crimes against peace and against humanity and threatens them with the most severe punishment. The Allied nations held these rights valuable enough to have their soldiers fight and die for them with enthusiasm.

On the other side we have the life of individual human beings, their physical safety, respect and deference for their personality, their freedom and free will which, too, certainly constitute rights of high value. There may have been hundreds of victims who had to suffer in this connection. However, it was a negligibly small number in comparison with the masses which Himmler, Hitler and their accomplices had already murdered or intended to murder.

I now ask:

Which of the two contesting rights is the more valuable one, in the sense of proportionality?

It shall be far from me to excuse or belittle the horrible things which have happened in the concentration camps, but in spite of all horror which I feel, I can only answer the question as follows:

The protection of civilization and of humanity is to be put above the life and health of single individuals, as much as one may pity these inevitable victims. And, therefore, it was necessary, absolutely necessary, to accept the violation of the less valuable rights characterized above, in order to save the more valuable ones, the great entirety. It was necessary for Sievers to remain in his position at the "Ahnenerbe" in order to be able to liquidate Himmler.

It would be easy to state now, afterwards, that Sievers could have acted differently, that he didn't have to go that far. But there is nobody who has told us so far: how. Now even the prosecutor attempted to or was able to make a concrete proposal to that effect. And even if it should be possible, even if today on calm reflection, a possible way out could be found, it cannot be held against the defendant Sievers if he did not think of it at that time. One can easily put oneself in his situation at that time and take its psychological effect into consideration. Only then can one imagine what amount of reflection, what amount of keenness in selecting his means could be asked of him. This, too, is a recognized principle and explained in detail at Wharton, article 621. Everybody must, admit, however, that it was enormously difficult to find one's way in this labyrinth of demands and sentiments, to keep exactly to the right path, and not to overstep, not even by a hair's breadth, the fluctuating limits of emergency. And we also know how much Sievers fought with himself for a solution of this problem. If afterwards you state that only in the choice of his means did he make a slight mistake, he is, after all, fully excused through the psychological effects of

situation at that time; one must not ask too much of one who was to act in a dangerous situation.

Honored Judges, others, too, faced the same question Sievers had to face. What for instance would you do with the camp doctors who knew about these experiments in the concentration camps and prepared them and assisted the doctors accused here? Would you sentence these people for complicity? What does for instance, the witness Neff say on 18 December 1946?

"I am aware of the responsibility and of the consequences. It was not only the court martial, not only the fear of Dr. Rascher, but the duty placed upon me by my comrades to hold out there, in order to prevent what I could".

Would you sentence the Lieutenant of the Ghetto, Rosenblatt at Litzmannstadt, who, according to the testimony of the witness Hielscher was forced, personally to select the inmates of the ghetto for the gassing? Would Rosenblatt claim in vain, that, after hard struggles, with himself, he accepted the duty placed upon him by his comrades to hold out in order to prevent even worse things.

We see, that in the last analysis made exactly the same decision Sievers made.

And still Sievers tried to make up for all he had to tolerate and witness by helping in other ways. Did he not save many? Sievers participated in a decisive way in the prevention of further experiments with low pressure chambers, with dry cold in the mountains, in the prevention of the application of the "a" substance and others. He saved three hundred Norwegian students from the concentration camp at the last moment. By warning him in time, he helped a Dutch professor to flee to Sweden. He alleviated the fate of many others.

These, however, are only a few examples to which I don't want to add any more for lack of time. You have learned of many more through the affidavits submitted.

And especially I don't want you to forget, honorable judges, that

Sievers not only had to witness the sufferings of other, he was also ready to put his own life at stake and to sacrifice it in case of failure. Put yourself in his position, and you will admit enormous courage and readiness for sacrifice were needed to hold out in the position of the defendant Sievers and to carry through. Did he not see how almost daily other men from the resistance movement were hunted down by the Gestapo, by the Security Service and the People's Court? Did he not have to fear the same fate every hour of his life, and was it not likely that daily temptation to withdraw from this dangerous task would assume gigantic forms?

Gentlemen of the High Tribunal! As far as it was possible in this short period of time, I have attempted to demonstrate the actual and legal side of Sievers's activities in the Hallacher resistance group. Even if Sievers should be found guilty of participation in inadmissible experiments on human beings, it must be taken into consideration that he did no more than what he was forced to do by his orders. In no place and at no time did he do anything which went beyond the orders given to him. That he did, he had to do, in order to fulfill the great and high task which fate had assigned to him. You, gentlemen of the tribunal, with your imperishable sense of justice will weigh all pros and cons of the Sievers case, and I am firmly convinced that your verdict in the case of Sievers will be one of "not guilty", for which I plead herewith. Thank you.

THE PRESIDENT The Tribunal will now be in recess until 0930 tomorrow morning.

Part I

Official Transcript of the American
Military Tribunal in the matter of the
United States of America against Karl
Brandt, et al, defendants, sitting at
Nurnberg, Germany, on 16 July, 1930,
Justice Seals presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal I.

Military Tribunal I is now in session. God save the United
States of America and this honorable Tribunal. There will be order
in the court.

THE PRESIDENT: Mr. Marshal, you ascertain if the defendants are
all present in court.

THE MARSHAL: May it please your Honor, all defendants are pre-
sent in the court.

THE PRESIDENT: The Secretary-General will note for the record
of presence of all the defendants in court.

The Tribunal will now hear arguments on behalf of the Defendant
Krugowsky.

MR. FLEMING (Counsel for the Defendant Krugowsky): Mr.
President: The Prosecution said in its arguments: If Grawitz were
still alive he would sit here as one of the principal defendants
on the defendants' bench. This is certainly true. But Grawitz
passed sentence on himself. And what is the Prosecution doing?
It indicts Krugowsky instead of Grawitz. It does not consider in its
arguments that Krugowsky was not a private person but a Medical Of-
ficer in the Waffen - SS, so a soldier, and that Grawitz and
Himmler were his military superiors. It speaks of conspiracy
but it does not examine thereby to what extent a conspiracy may
be conceived when military subordination plays its part. The Pro-
secution advanced in its summing - up documents and in its oral
arguments the original allegations of the indictment. It did not
discuss all the evidence brought by the defendants for their
discharge. It just pointed out a bit scornfully that this evidence
is mostly composed of affidavits. But this is no fault of the



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defendants'. They would have preferred to be able to produce counterproofs taken from their records. But all the documents of the defendants and of other offices, where the evidence brought in by the Prosecution is taken from, are in the hands of the Prosecution. It selected parts of them which, separated in part from the context, seem to incriminate the defendants. But it made it impossible for the defendants to find the records which are in connection with the evidence produced by the Prosecution and would bring about a complete elucidation.

I would ask the Tribunal to consider in particular this difficult position of the defendants with regard to evidence. It compels to an increased extent to the old legal principle that the defendant is considered as not guilty before his guilt has not been proven and that the Court is to judge in favor of the defendant if the case is doubtful.

The charges against Krugowsky are composed of three groups:

- (1.) The typhus experiments and the execution carried through with scimitars where volunteers were not in question. The Tribunal will have to consider in these cases if the emergency of the State contended by Krugowsky really existed and if it justifies the typhus experiments and the execution by scimitars. If answered in the affirmative, neither the typhus experiments nor the scimitar execution are criminal since there is no objection raised on the way they were carried through. If the question is denied it is to be considered if and to what extent Krugowsky partook in them and if he is responsible under criminal law.
- (2.) The second group are the acts of Diny which he committed arbitrarily, e.g. his participation in a killing by phenol and the special experiment on 6 persons.
- (3.) The third group are the protective vaccinations for which volunteers were available according to the evidence produced by the Prosecution.

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The defendant Mr. Ngowsky is indicted first of all for his alleged participation in the experiments with typhus (spot fever) at Buchenwald and in other medical experiments. When submitting evidence the Prosecution treated these experiments as criminal and as experiments carried through by physicians. Also when interrogating the experts Professor Leibbrand and Professor Ivy the Prosecution treated these medical - experiments as experiments made by physicians and asked the experts if these experiments were to be considered as admissible from the point of view of medical ethics.

I am convinced that the experiments to which the Prosecution refers as to the base of its indictment are not at all experiments which originated from the initiative of the executing physicians. They really are research work necessitated by an uncommonly urgent emergency of the State and ordered by the highest governmental authorities competent for it.

Also Professor Ivy admitted that there is a fundamental difference between the physician as a therapist and the physician as a scientific research worker. When asked by Dr. Tipp: "So you admit that for the physician as a therapist, the physician who cures, other rules and therefore other paragraphs of the oath of Hippocrates are in force?" he gave the answer: "Yes, I do so without any doubt."

Consequently experiments on human beings carried through for urgent reasons of a public character and ordered by the competent authorities of the State cannot simply be considered as criminal only because the experimental persons chosen by the State for the research work were not volunteers.

The Prosecution ought to have shown in addition with regard to the individual experiments for which reasons they were criminal apart from the fact that the experimental persons were not volunteers.

The largest space in the indictment against Mr. Ngowsky is taken

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up by the typhus experiments at Buchenwald. The Prosecution does not contend that Wragowsky partook in them personally, but I further believe to have demonstrated in my deductions in writing that he neither suggested nor ordered nor controlled these experiments, that he did not further them or even approved of them.

Nevertheless, for precaution's sake I also must prove that the experiments in question were not illegal and that under no aspect they can be considered as criminal since they were caused by an urgent emergency of the State.

This proof can be produced in a particularly impressive way just in the case of the typhus experiments.

In the Flick trial the Prosecution produced Document NI 5322 which I offered to the Tribunal.

In this Document which comes from the Larer Office Westphalia and is dated Feb. 3, 1942 it is said that according to a communication made by the Military Command a short time ago the number of the prisoners of war who died of typhus still came up to 15,000 a day.

I think I need not emphasize any more that it is to be considered as a most urgent emergency of the State if of one sole epidemic disease, 15,000 people a day I repeat, are dying in the camps for Russian prisoners alone.

On the other hand the Prosecution has stated that from the beginning of 1942 till the beginning of 1945, 142 persons in total died in consequence of the typhus experiments at Buchenwald. I intentionally place these two figures in the beginning of my arguments. They show that during the whole time of the experiments in Buchenwald, the number of the victims who died amounted to one percent of the toll taken every day by typhus in the Russian prisoner camps alone in winter '41 and '42. In addition to these victims in the Russian prisoner camps the enormous number of people who died of typhus amongst the civil population of the occupied Eastern territories and

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the German Armed Forces is to be considered.

It is clear that under conditions drastic measures had to be taken.
When judging the Tophus experiments carried out in the concentration
camp

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Buchenwald one must not forget that Germany was engaged in war at this time. Millions of soldiers had to give up their lives because they were called to the front by the State. The State employed the civil population for work according to State requirements. In doing so it made distinction between men and women. The State ordered occupation in chemical factories which was detrimental to the health. It ordered work at the construction of new projectiles connected with considerable danger for life. When unexploded new enemy shells were found at the front or unexploded new bombs after an air raid at home it ordered gunnery officers to dismount such new shell or bomb with the aid of assistants to get acquainted with their construction. This implied great danger for life. Then the fillings of the new shells and bombs had to be examined as to its composition by an analytical chemist. In certain cases this work was detrimental to the health of the chemists and their assistants and always rather dangerous.

In the same way the State ordered the medical men to make experiments with new weapons against dangerous diseases. These weapons were the vaccines. That during these experiments not only the experimental persons but also the medical men were exposed to great danger, is shown by the fact that Dr. Ding infected himself unintentionally in the beginning of his typhus experiments, and fell seriously ill with typhus.

With regard to such medical experiments one will have to agree on principle with the opinion of Prof. Ivy and Prof. Leibhard that they are to be carried through only on volunteers. But even Prof. Ivy admitted that there is as much difference between cases in which a scientific research worker starts such experiments on his own initiative, and the cases where he is granted authority to do so by the competent organs of the State. The question whether the organ of the State is responsible was answered by him in the affirmative but he added that this has nothing to do with the moral

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responsibility of the experimenter towards the experimental subject.

This moral responsibility of experimenter towards the experimental subject relates when the experiment is ordered by the State to the way the experiment is carried through but not to the experiment itself.

That the experiments at Buchenwald were carried out correctly was not contested by the Prosecution. By way of precaution I offered evidence for the correct execution in my closing brief.

On a question asked by D^r. Sauter, Prof. Ivy observed that he did not think the State could take the responsibility to order a scientist to kill a man to get knowledge.

The case with the typhus experiments is different. No order was given to kill a man to get knowledge. But the typhus experiments were dangerous experiments. Out of 724 experimental persons 154 died. But those 154 dead of the typhus experiments have to be confronted with the 15,000 who died of typhus every day in the camps for Soviet prisoners of war, and the innumerable dead by typhus amongst the civil population of the occupied Eastern territories and the German troops. These enormous numbers of dead led to the absolute necessity to have effective vaccines against typhus in sufficient quantity. The newly developed vaccines had been tested in the animal experiment as to their competitiveness.

I explained this in detail in writing.

The Tribunal will have to decide whether, in consideration of the enormous extent of epidemic typhus, in consideration of the 15,000 men dying of it every day in the camps for Russian prisoners of war alone the order given by the Government authorities to test the typhus vaccines was justified or not. If the answer is affirmative the typhus experiments at Buchenwald were not criminal, since the Prosecution did not contest that they were carried out according to the rules of the medical science. In this case every responsibility of Mrugowsky for these experiments is excluded. If, on the

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other hand, the Tribunal denied the question and declared the typhus experiments at Buchenwald as criminal then it would have to be considered if Krugowsky is responsible from them in any way.

In my written Statement I explained in detail that Block 46 at Buchenwald, where the experiments were carried out did not depend on Krugowsky's orders, but that Dr. Ding worked under the immediate orders of Grawitz. Out of the extensive evidence I offered to prove this fact I only want to stress the letter addressed by Grawitz to Krugowsky in which Grawitz declares explicitly on Aug. 24, 1944, that he consented that the series of experiments he mentioned in the letter be carried through at Buchenwald in Block 46 and the letter addressed by Krugowsky to Grawitz on Jan. 29, 1945 in which he suggests the testing of a jaundice virus and in which he writes:

"I pray to obtain with the Reichsfuehrer - SS the permission to carry through the infection experiments in the typhus experimental station of the concentration camp Buchenwald."

These two letters demonstrate that still in the autumn 1944 and early in 1945 Krugowsky could have carried through a series of experiments in compound 46 only with a special permission. This refutes the assumption of the Prosecution that compound 46 was placed under Krugowsky's orders.

But above all I want to stress again the affidavit given by Dr. Morgen on May 23, 1947 in which he stated that when he investigated the occurrences in Block 46 at Buchenwald, Dr. Ding showed him an attestation signed by Grawitz in which Ding was commissioned explicitly to carry out the experiments.

Dr. Morgen has further stated that he had to report to Grawitz personally about the result of his investigations as an examining Magistrate at Buchenwald. There also it resulted according to the affidavit given by Dr. Morgen that Grawitz ordered the experiments. He then called Dr. Ding "his man", and said he would regret it if

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the investigation had brought an charge against Dr. Ding, since he employed him for the experiments. Morren emphasized that the name of Krugowsky was not mentioned in the course of his conversations with Ding and Grawitz. This clearly shows, I think, that Krugowsky had nothing to do with Block 46 at Buchenwald. For further evidence that Ding still depended on Krugowsky's orders in Block 46, the Prosecution referred to the sketches designed by Krugowsky, NO 418 and 417, which were offered with Doc. Book I of the Prosecution. It results from these pictures that the action for typhus and virus research was only Block 50. Block 46 was called as formerly "Experimental Station of the concentration camp Buchenwald". This results from the letter just quoted. Block 46 was only attached to the section for typhus and virus research without establishing thereby and relation of subordination to Krugowsky. This is shown in detail in my closing brief.

From the two sketches designed by Krugowsky, which show that the section for typhus and virus research was under his control from its establishment to the end of the war, nothing can be deduced therefore from the assumption that he was Ding's superior in Block 46.

By this fact and the further evidence brought in my closing brief it is demonstrated that Block 46 at Buchenwald was not placed under the order of Krugowsky. There is therefore no responsibility of Krugowsky for the typhus experiments.

In this connection I want to emphasize that Krugowsky never denied that he knew the typhus experiments at Buchenwald were ordered by Grawitz and carried out by Dr. Ding. He never denied that he saw for instance, the report about the series I of the experiments, which he rewrote in his letter of May 5, '43 and that he saw Ding's essay about acridine which Ding sent to Grawitz for consent to publication on 18 months after the experiments were completed and which Grawitz then gave to Krugowsky to return it to Ding. But from this knowledge no responsibility of Krugowsky for the typhus experiments

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can be deduced. The experiments were ordered by Himmler and Grawitz as his highest military superiors. As a Medical Officer of the Waffen-SS Krugowsky had no possibility to oppose these experiments ordered by his superiors in any way. When Grawitz first suggested the experiments he contradicted him at once, and induced him to ask for a decision of Himmler as the highest superior. Himmler decided against Krugowsky. Under these conditions Krugowsky could do no more. He obtained however by his opposition that he was not commissioned with the experiments but that Ding got the order for execution.

Nor has the Prosecution brought any evidence to show that Krugowsky intervened later in any form in the typhus experiments at Buchenwald, that he furthered them or participated in them in any way. On account of the fact that Krugowsky knew about the typhus experiments no charge can be made on him under criminal law, because neither in law nor in fact he had any possibility to prevent the experiments or to enforce later their cessation.

The Prosecution further based its charges against Krugowsky on the depositions of several witnesses that he had been Ding's chief in Block 46, also in so far the experiments carried out by Ding in Block 46 were concerned. I have contested this with all energy. All the statements produced by the Prosecution in this respect have their origin in information given by Ding. None of these statements comes from somebody who worked in Block 46 himself. It is significant that the Prosecution has not been able to offer a single order given by Krugowsky to Ding for the carrying out of typhus experiments although its witness Balachowsky stated that Kogon had managed to collect extensive evidence which he had handed, almost complete to the American Army. If there had been any written orders from Krugowsky to Ding, the latter would certainly not have destroyed them for the sake of his protection, and Kogon would

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have given them to the American Army with his other documents. It is true that the witness Kopon who deserves no credit, as I shall show, pretended that Mrugowsky gave to Ding mostly only oral orders. But he further deposed that from the year 1943 onwards Ding was no more satisfied with oral orders from Mrugowsky, but asked for such to be given in writing. In spite of this not a single written order from Mrugowsky to Ding concerning the execution of a series of typhus experiments was produced.

The only witness who might be able to tell anything about the order given to Ding in respect of the typhus experiments by his own knowledge is the witness Dr. Morgen. I just remarked that Morgen saw the order given by Grawitz to Ding for the execution of the typhus experiments and that Grawitz personally told Dr. Morgen that Ding was his man at Buchenwald and said he employed him there.

The error of the witnesses who stated that Mrugowsky had been Ding's chief, results from the fact that Ding was dependent on Mrugowsky in respect of the production of vaccine in Block 50 and also concerning his activity as a Hygienist. I showed in my closing brief that from 1942 to 1945 Ding was working with the typhus vaccine experiments only for about 2 1/2 months, if one adds all the hours he worked from them. All the rest of his activity during 3 years approximately was devoted to the vaccine production and the work of a hygienist, so for the activity where he was Mrugowsky's subordinate. It is comprehensible that during the approximately 37 months he worked for Mrugowsky he got many more orders from him than from Grawitz for the execution of the 13 typhus vaccine experiments. It therefore is comprehensible that the main part of his correspondence under these circumstances was carried on with Mrugowsky.

In consequence of the contention of the Prosecution which hardly spoke of anything but of the typhus - vaccine experiments, and

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produced documents only in respect of these the impression had to originate that the typhus - vaccine experiments were Ding's main activity at Buchenwald. That is not so. For his main activity at Buchenwald, Ding was Krugowsky's subordinate. Therefore it does not result from the fact that his correspondence went on mainly with Krugowsky and that he called Krugowsky his superior that also in respect of the typhus - vaccine experiments a connection between Krugowsky and Ding was established not that Krugowsky participated in these experiments in any way nor that he was responsible for them. The Prosecution did not deny that such double subordination as it existed between Ding on one hand and Grawitz and Krugowsky on the other is possible in a military organization and happened frequently. I can refer also in this respect to the statement in my closing brief.

The witness Kogon and Ding's diary are the chief means of evidence advanced by the Prosecution against Krugowsky. This is why in my closing brief I explained in detail that neither Kogon's statement nor the Ding diary furnish any substantial proof. As to the statement of Kogon I want to emphasize once more the principal points:

Kogon described in the witness stand the dramatic circumstances under which he pretends to have saved the so-called diary of Ding. I needn't point out that the particular occurrences which happened when he saved the diary as he pretends he did would have impressed him so that he did not forget them if his statement be true. So he couldn't possibly relate this event in a different way when he related it several times. In fact he gave in the physicians' and the Pohl trials two reports about the way he alleges to have saved the diary, which differ so fundamentally that this is only comprehensible if his contention that he saved the diary is untrue and the descriptions he gives of this event are a pure invention.

Kogon stated in the physicians' trial that Ding asserted the secret documents to be burned in Block 46. Whilst Ding and Dietrich

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went into the adjoining room for a moment he had thrown the diary and a heap of papers into a box to save them from destruction. Two days later he had told Ding that he had saved the diary and a heap of other papers from being destroyed and had got the permission to fetch them from Block 45 where he couldn't have got them otherwise. He had fetched them and kept them since. This description is quite plausible and it would be hard to refute it if there was not Kogon's own statement in the Pohl trial.

In the Pohl trial the same Kogon has said about three months later: he had been standing with Ding and Dietzsch at the same table when the secret documents were sorted for destruction. Suddenly Ding had pushed the diary and other papers towards him. He had taken them and carried them to Block 50 together with Ding. Ding had not known at this time that Kogon had the diary and the other documents with him but he had told Ding this on the same day.

A more striking contradiction than between these two statements about the

saving of the diary is hardly possible. If Kogon had really saved the diary really in the way he described in the physicians' trial then the moment when he threw the diary into the box and his reflexions during the 2 days before he told Ding that the diary had not been burned would have remained in his memory unforgettably. The way from Block 46 to Block 50 to fetch the diary and the way back with the diary would have been remembered by him so well that a different description would be impossible. Also if the preservation of the diary had occurred in the way described by Kogon in the Pohl trial it certainly would have been recollected by him so clearly that a different description would be impossible too. So the two descriptions about the preservation of the diary, differing so fundamentally from each other, can be explained but in two ways. Either Kogon's statement is untrue and he didn't save the diary at all. In this case, if he told the Tribunal a falsehood about such an important point then no credit is to be given to his whole statement. Or Kogon must have such a bad memory that his contradictions in his testimony can be explained by that. In this case too his entire testimony would bring no probative value on account of his bad memory.

An argument against the correctness of Kogon's statement about the saving of the diary is also the statement made by Dietzsch and produced by me, that Ding tore up the diary in his presence and threw it into the lit stove where it was burned, when the secret documents were destroyed. Dietzsch declared explicitly that Ding made sure that all the documents were burned entirely after the destruction of the papers had been finished.

I should say that by Dietzsch's statement combined with the contradiction between the two statements of Kogon's, it is proved that what Kogon said about the saving of the diary is a falsehood.

In my closing brief I in detail dealt with still further points where the statements made by Kogon in the physicians' trial on

one hand and in the Pohl trial on the other are in a similarly marked contradiction as in respect of the preservation of the diary. It will not be necessary to repeat here all these arguments. I should like to refer to them.

The second main evidence of the Prosecution against Krugowsky is the diary which is said to have been saved.

The phantastic description of the saving of the diary given by Egon in two different relations deserves no credit. Therefore, Dietzsch is to be believed who said that Ding burned the original diary of Block 46 in his presence. This statement is supported by the opinion given by the handwriting experts, Zettner and Eastvogel treated in detail in my closing letters.

In the meantime the Prosecution declared whilst discussing the Beiglboeck documents of evidence that it had the possibility to have the handwriting examined as to their age in an institute at Frankfurt and also to have documents investigated into in every way. The Prosecution thereupon stressed explicitly that I also had the Ding diary examined by experts.

The Ding diary is of importance for the prosecution for the charges against several defendants. So the Prosecution ought to have found it more important to have the genuineness of the Ding diary examined than the Beiglboeck documents. Ding signed in ink. So the institute at Frankfurt would have been able to ascertain without any difficulty whether the signature on the first page is several years older than the signature on the last page. Further, the institute could have ascertained without any difficulty whether the whole diary from the end of the year 1941 till spring 1945 was written on exactly the same paper or not. But the Prosecution did not hand the diary to this institute for examination. This fact shows that it was convinced itself that such examination would not have given any result which was favorable for the Prosecution.

In my opinion this is a particularly strong argument for the assumption that the diary was really composed and written down altogether after the events. For the rest I also want to refer to my closing brief.

The strength of the evidence of this diary lies in the fact that the man who wrote it cannot yet foresee the future development when making his entries. Therefore it is to be presumed that the entries render the events objectively and completely. If a made document which is composed later is made up externally as a diary the intention is to be deduced therefrom to influence the reader in a certain direction, and also to deceive him for this purpose. This is the reason why any record written later and made up in the form of a diary is of no probative value.

Now the Prosecution tried to show that the Ding diary is of probative value by comparing its contents with a number of documents which have the same contents as the entries in the diary. In my closing brief I dealt with these documents in detail and proved that these all came from Ding without exception. All documents which the Prosecution compared with the diary, Ding had at hand still when he made the belated compilation after the original diary had been burned. They are vouchers he used for the entries he made in the diary we have now. Therefore it cannot be deduced from the conformity of these documents and the diary that the latter is good evidence.

One of the documents the Prosecution compared with the diary is the so-called work report of Ding. This work report is really only a draft which was not been signed nor was sent to Krugowsky. I explained this in detail in my closing brief and offered evidence for it.

According to Eagon's statement this draft of the report was written in Block 50 by the second compound clerk. Such draft has no probative value unless it was signed by the person who is to

sign it. In this instance this would have been Ding.

Mr. Hardy admitted that this work report was only prepared for signature by Ding. He thereby admitted that it was not signed. Therefore the draft has no probative value.

If these three main elements of evidence fail, Kogan's statement, the work report and the Ding diary, the chief part of the evidence brought forward against Krugowsky fails.

The Prosecution contended in its summing-up that the experimental subjects volunteered neither for the typhus experiments nor for the other experiments at Buchenwald. In respect of the other experiments this is not correct. I shall deal with this later.

In respect of the typhus experiments it may be correct that most of the experimental subjects did not volunteer for them.

On the other hand it results from the closing brief of the Prosecution that it is not alleged for the period till the fall 1943 that Krugowsky had anything to do with the selection of the prisoners for the experiments. This is correct and was further put in evidence in my closing brief. In autumn 1943 according to the contentions of the Prosecution which refers in this respect to Kogan's deposition again, Ding is said to have addressed the request to Krugowsky that the experimental subjects should be chosen by the Reichsfuehrer-SS. This statement of Kogan's is also untrue. I have pointed this out in detail in my written statement.

In this connection the Prosecution mentions Himmler's order of Febr. 27, 1944 relating to the selection of the prisoners by the Reichspolizeamt. But this order of Himmler was not given pursuant to a suggestion made by Krugowsky. It really is due to the attempts of Dr. Morgen. He explained this accurately in his affidavit of May 23, 1947, which I offered in evidence.

So it is an established fact that until autumn 1943 Krugowsky had nothing to do with the selection of the prisoners, and that from this time on the prisoners for the typhus experiments were chosen by the

Reicha-Kriminal-Polizeistat pursuant Himmler's order suggested by Dr. Morgan, so that after this time Krugowsky had also nothing to do with the choice of the prisoners.

The Prosecution calls the typhus experiments criminal, in particular because control persons were used and above all because of the alleged "passage persons".

As to the control persons I explained in my closing brief at length that such vaccine experiments are impossible without the use of control subjects and lead to no practical result without them.

If one takes the Ding diary for information it appears that in a number of test series the cultural virus used was no more pathogen out for human beings. If no control persons had been infected the fact that the experimental persons were not taken ill would have been explained as a consequence of the protection obtained by the vaccination. This would have led to entirely wrong deductions, and to the use of inferior vaccines in practice. If one considers the typhus experiments as admissible the use of control subjects is therefore indispensable. I explained this in detail in my closing brief.

On the other hand the use of passage persons who were infected only in order to have living virus always at hand could not be justified. I have demonstrated in my writing that such passage persons were never used. Until April 1943 there was no reason to use them. For until April 1943 it is said explicitly in the Ding diary at each series of experiments that the infection was carried through by means of cultural virus bred in the yolk sacs of hens' eggs which Ding got from the Robert Koch Institute in Berlin. After April 11, 1943 Ding infected with fresh blood taken from persons who were ill with typhus. But also during this period the use of passage persons was superfluous because Ding always had persons at his disposal who had contracted typhus spontaneously from whom he could take the fresh infected blood.

If the Prosecution had wanted to bring evidence that passage persons were used in Block 46 it could have done so best by Ding and Dietzsch. It produced statements from both in which the question of the passage persons is not mentioned. The Prosecution knew by the examination of Mrugowsky in the witness stand that he denied the use of passage persons. When I said at the end of the production of my evidence that I did not call Dietzsch to the witness stand but only offered an affidavit from him, Mr. Hardy asked the Tribunal for the permission to interrogate Dietzsch on certain facts.

However, he never produced a record about such an interrogation. This is further evidence that Dietzsch did not confirm the use of passage persons. All the witnesses who made statements about the use of passage persons did not work in Block 46. They therefore know nothing from their own observation, but only through third persons. Dr. Morgen investigating as an examining magistrate in Block 46 in Buchenwald, made no ascertainment about passage persons. So there is no conclusive evidence of any kind that passage persons were used in Block 46. On the contrary I proved in my closing brief that passage persons were really not used.

If the Tribunal would assume that the use of passage persons was proved in spite of that there would be no fault of Mrugowsky's in the use of passage persons, because I demonstrated that Ding was not his subordinate in respect of his activity in Block 46 and because there is no evidence whatever that he even as much as knew about the use of passage persons.

In my written statements I then dealt in detail with the experiments with acridine preparations in the frame of the typhus experiments. I proved that Ding got these preparations not from Mrugowsky but from the I.G. Farbenindustrie A.G. There is no evidence whatever that Mrugowsky had any knowledge of these experiments carried out by Ding.

Ding's report of the acridine experiments submitted for publication was handed to Mrugowsky by Grawitz only about 18 months after the

termination of the experiments. Therefore for the experiments with scridine preparations which caused a particularly high number of dead no charge can be made against Krugowsky under criminal law.

In respect of the poison experiments I proved in my written statement that Ding's assertion he had received an order from Krugowsky to be present at an euthanasia by phenol is not correct. Prof. Killian who according to Ding's statement was present when the order was given said that this statement of Ding's is not correct. I showed that the examination of the question whether serums containing phenol have a noxious effect can be carried through by the use of serums with and without phenol for comparison and that a series of experiments with serums containing phenol was never carried through.

The experiments with pervitine were carried out on the initiative of Dr. Morgen and Dr. Wehne, according to the Ding diary. I proved that by these experiments no harm was done to the health of the experimental subjects. The experiments were made with pervitine which is to be had in any chemist's shop without a prescription, and consequently is no poison. In the experiments it was used together with a soporific because the authority who investigated into the death of Hauptsturmfuehrer Koehler wanted to find out whether by this treatment the effect was increased in

one or the other sense. The only effect was that the experimental subjects fell to a disturbed sleep for up to 20 hours. Also for this Purvittin experiment which was not ordered by Mrugowsky, in which he did not participate in any way and in respect of which the Prosecution did not even demand that he knew of any responsibility under criminal law which may be deduced against him.

About the special experiment on 6 persons mentioned in Ding's Diary it is again the witness Kogon alone who stated particulars. In my closing brief I pointed out that also in this case the depositions of Kogon about the origin of this experiment, in the Pohl trial and the physicians' trial, are in contradiction (p. 191). Thus his evidence has no probative value. Moreover what Kogon said about this experiment is only based on Ding's relation except the sealing and the burning of the prescription. In respect of this special experiment any evidence is lacking with which poison and in which manner the special experiment was carried through and what was to be ascertained by the experiment. After the collapse Ding told the defendant Sievers he had filled towards the end of 1944 80 bottles with prussic acid but he unfortunately had taken none of them with him to make an end with himself.

If Ding carried through his "special experiments" with those prussic acid capsules cannot be cleared because Ding left no report about the way the special experiment went on.

In the Ding Diary it is said that the experiment was made by order of Mrugowsky and of the Reichskriminalpolizeiamt. As the diary has no probative value the truth of this contention cannot be proven by this document alone. Other evidence that Ding poisoned 6 prisoners by order of Mrugowsky fails. So there is no conclusive evidence that Mrugowsky ordered this experiment or that he even knew about it.

The Prosecution further indicted Mrugowsky for the sake of an execution carried through at Sachsenhausen where three highwaymen sentenced

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to death were executed with projectiles poisoned with aconitine. I have proven that Wrugowsky attended this execution only as execution physician. I further demonstrated that the execution was carried through because in an attempt on the life of a superior civil servant in the General government revolver ammunition had been used where the bullets had a hole in them and were poisoned with aconitine. By this use of poisoned Russian bullets and the book by Henderson in which the preparation for the use of poisoned projectiles in the first world war was described the concern had been increased that shortly poisoned bullets would also be used at the front. I proved that the use of poisoned ammunition at the execution served the purpose to find out if pure aconitine or blend had been used and how much be available in case of need to use counter-poisons.

I have brought evidence that all executions in concentration camps were ordered by the Reichskriminalpolizeamt and that the presence of an execution physician at such executions was prescribed. The execution at Sachsenhausen had been ordered by the Reichskriminalpolizeamt. No charge can be deduced against Wrugowsky from his attendance as an execution physician under criminal law. I have explained this in detail in my closing brief.

In respect of bacteriological warfare I want to be very brief. The Prosecution only produced a letter from Grawitz to Himmler with which Grawitz sent to Himmler memorandum about the defense against bacteriologic warfare. There is no evidence at all that Wrugowsky basied himself in any way with the carrying of bacteriological warfare actively. From the dealing with measures of defense against bacteriologic warfare no responsibility under criminal law can be deduced.

The Prosecution assumes that Wrugowsky was Ding's superior for his activity in block 46. It therefore tries to make him responsible for all the experiments carried through in block 46 at Buchenwald besides the

typhus experiments. The indictment for those experiments fails like the indictment for the typhus experiments if Krugowsky was not Ding's superior for his activity in 46. By way of precaution I showed in my closing brief that he had nothing to do with the strychnin experiment. (p. 214) The strychnin experiment was brought about by Conti, the Secretary of State in the Ministry of the Interior, via Grawitz. Ding sent the records direct to Christiansen, the technical expert of Conti. There is not the slightest hint that Krugowsky knew about those experiments. (Closing letters p. 214).

In 46 experiments with incendiary bombs were further made by Ding. I demonstrated in my closing letters that these experiments with bombs were initiated by the superior SS - and Police Leader von Woyrsch through Grawitz. There is no evidence of any description for a participation of Krugowsky.

In respect of all experiments carried through in block 46 therefore all evidence fails that Krugowsky ordered these experiments, that he participated in them in any form or that he had been in a position to prevent those experiments ordered by his superiors Himmler and Grawitz or influenced them in any way. No penal guilt against Krugowsky has been proved. Krugowsky admitted that he initiated the vaccinations against smallpox, typhoid fever, paratyphus A and B and diphtheria as well as the high - immunisation experiment with Frankel vaccines, the dysentery protective vaccination and the testing of yellow fever vaccines. At none of these protective vaccinations artificial infection was carried through. That artificial vaccination was adopted would have to be proven by the Prosecution. It brought no evidence for this contention. For all these experiments volunteers were available as it is shown in my closing brief.

All these vaccines were tested in numerous experiments on animals and on human beings.

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The Prosecution has not contended that the medical treatment of all vaccinated persons was blameless as far as vaccine reactions act in. So at these experiments all requirements were met which the experts of the Prosecution, Prof. Ivy and Prof. Leibbrand enumerated for experiments on human beings so that these experiments cannot be called criminal under any aspect.

When the submission of my Document Book II was discussed Mr. Hardy admitted explicitly that also the Prosecution considers the carrying through of medical experiments on volunteers as admissible.

So the charge that the above mentioned protective vaccinations were criminal must be dropped.

In addition I have shown in my writings by producing affidavit of the most eminent physicians that these protective vaccinations are no unlawful experiments and must be called absolutely necessary from a medical point of view, in particular if one considers the conditions of life in the concentration camps.

As to the use of blood serum preserves I have shown in my closing letters that they were adopted in tens of thousands cases amongst the troops with the greatest success and that they never did any harm to health. At Buchenwald the blood serum preserve was used also exclusively for therapeutic purposes. Under no aspect this use can be called an "experiment". For there was no experiment to be made with this approved therapeuticum.

As to the drawing of blood from convalescents of typhus for the production of convalescent serum for the concentration camps and of blood for the production of blood preserves I have commented in detail in my closing letters. (p. 239 and following.)

The taking of blood from convalescents from typhus is under no condition a measure which can injure the patient. With typhus the blood circulation is always impaired and the relief of the circulation by

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taking stem blood which corresponds to a blood letting, is to be considered as a therapeutic measure. Under no condition the taking of blood in such small quantities as it was done at Buchenwald, I have explained this in my closing brief.

Nor can the drawing of the small quantities of blood required for the production of blood serum preserves be harmful under any conditions. This also is shown in detail in my written statement. Moreover the blood donors were volunteers who offered themselves because they got additional food. So also these bleedings which were carried through under Drugowsky's responsibility were no offense of his under criminal law.

Finally the Prosecution has charged reproached to Drugowsky with having ordered the "Cyclond B" for the gas chambers at Auschwitz. I have shown in my closing brief, that there are mistakes in the affidavit of Hanes when I cannot ask any more for cross-examination because he is dead and that Drugowsky never had anything to do with the ordering of gas for the Auschwitz gas chambers. This was also confirmed by Dr. Morgan who acted at Auschwitz also as an examining magistrate.

As to item IV of the indictment under which Drugowsky is charged to have belonged to the SS as a criminal organization I have shown that he belonged to the Waffen-SS of which General Taylor himself said in his introductory speech that its members were trained and equipped as regular troops and fought in regular military units at the front. The IMT ruled that a man cannot be punished for having belonged to the SS if he was incorporated in it after Sept. 1, 1939 in such a way that he had no choice.

Drugowsky was an active Medical Officer in the Waffen-SS. As such he had no choice after the war had broken out whether he wanted to remain in the Waffen-SS or withdraw from it. Therefore the decision of the IMT about its criminal character is not applicable to Drugowsky. In addition I have shown in my closing letters that he practised no SS po-

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litics in any way nor made propaganda for the Party or worked for it.
(p. 247 ff).

I therefore am convinced that he cannot be punished either for his having belonged to the SS.

To sum up I want to say that all evidence brought by the Prosecution against Mrugowsky does not hold up under examination, for the reason of the particularly great quantity of facts to be discussed in respect of the Ding diary it was not possible for me to discuss each item in detail within the time available to me. But I also think this is not necessary because the Tribunal has my arguments at hand in writing, in which I commented at length to all charges.

I am convinced that the defendant Mrugowsky is guilty of none of the crimes he is indicted of.

I therefore petition to acquit the defendant Mrugowsky in respect of all the crimes he is indicted of.

THE PRESIDENT: The Tribunal will now hear from counsel for the defendant, Poppendick:

DR. BOEHM (For the defendant Poppendick):

Mr. President, Your Honors !

After the proceedings have lasted longer than 7 months, Case I against the SS doctors and German scientists is coming to an end. Many a sad chapter of human errings has been disclosed here. There will hardly be excuses for many things that happened. However, will the prosecution's evidence be sufficient to accuse every one of the defendants of having been connected with crimes that were committed and thus be able to construct an individual responsibility? Is Moliere actually right with regard to this trial and these defendants here when in his well known work "Le malade imaginaire" he allows the doctor's cap to be presented to the young doctor of medicine and thereby in jest lets the doctor's omnipotence be recorded with the cynical words:

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"I present you with the venerable and learned cap and with such concede to you the technical skill and power to heal with impunity all over the world, to purge, to venesect, to puncture, to cut, to bore and to kill?"

Should the doctors on trial here really have abused the professional position of a doctor in a shameful way that they cannot be adjudged any longer with this honorary title of a helper of mankind, but that rather together with the other defendants, as it has happened, already before the trial had started, they may be referred to as "these 23 oppressors" in a German newspaper?

No doubt the prosecution in their tendency towards generalization tried to attribute the answer to this question to us.

The indictment would like to see a distinction drawn between:

a. The non-German doctor who in the past decades has held medical ethics at a high level;

b. The German doctor who, in the years from 1933 to 1945, stood under the complete sway of biologicistic thinging, as Professor Leibbrandt put it;

c. Those indicted here, the immenence of humane feelings in whom has been a prior denied them and who are alleged to have banded together in order to commit crimes against humanity, without purpose, without meaning, and without success.

This crude picture of the German medical profession after 1933 was strengthened by Professor Leibbrandt's testimony who, perhaps uncounsciously, made of his testimony a blanket accusation of the German medical profession.

It is unavailing to us here that Professor Leibbrandt later, in a German newspaper, attempted to revise this point of view.

However, nothing better illustrates the success of the generalizing tendency of the prosecution than the spontaneous remark of a delegate to a recent session of the Bavarian Parliament who sank so low as to exclaim: "There is no crime to which a doctor in Germany would not have contributed."

It cannot be the task of the defense in this trial to throw the proper light on the German physician after 1933 and to extoll his services. Let the millions do that who were treated and healed according to the precepts of medical science and medical ethics by a conscientious stalwart German doctor after 1933 to whom they owe their lives.

Perhaps there are several 1000 foreigners among them, too. Let those people do it who can tell of the sacrifice, the silent heroism of the German physician in times of peace and war, and his self-denying service for humanity. They can probably tell you that it was not as if a certain percentage of National Socialist thinking was injected with every hypodermic needle which was administered a patient to cure him, as sometimes appears to be suggested by the Prosecution.

The understandable tendency of the prosecution to generalize should not, in the end, result in letting entirely secondary matters emerge as dominating ones, and in making people responsible for things for which they do not have the least semblance of responsibility. It is just in a criminal action as important as this one against 23 men of the health service that it is the greatest task to prove the individual responsibility of each defendant and thus find a basis for the presentation of the evidence. This task may not be altogether easy, because of external conditions if for example these defendants are simply described in German newspapers as these 23 German hangmen, without knowledge of the real facts and the acts with which they are charged and without grading the responsibility of the individual, and moreover if at the end of the presentation of the indictment, a book is published under the title "Dictate of contempt of human beings," which one-sidedly contains only the prosecutions documents, then right from the beginning the task of defense does not appear exactly simple.

The verdict against Erhard Milch gave certain indications regarding legal concepts in Anglo-Saxon procedure by recommending to the German people appreciation and veneration for

these legal principles upon which Democracy is founded. In this connection it mentions the significant principles which lie at the root of these legal concepts:

1. Every person charged with a crime is in the first place presumed to be innocent.

2. He remains under the protection of this legal presumption until his guilt has been proved beyond a reasonable doubt.

I wish to use these principles, too, in the final arguments for the defendant, Poppendick, in order thus to give the High Tribunal as clear a picture as possible of the legal and actual foundations on which the Prosecution bases its indictment of the defendant Poppendick.

The defendant, Helmut Poppendick, raised in the rural vicinity of Oldenburg, attracted to the medical profession by the example of ~~the~~ family physician, an honest family physician, spent the years of his education as well as the first years as a practicing physician in sanatoria and clinics in Berlin and its immediate vicinity as a specialist for internal diseases, until stimulated by the personality of Prof. Lang and his own inclination for natural science, he turned to hereditary biology. Then he soon becomes genealogical physician in the later Main Race and Settlement office and thus attained a more or less administrative medical position which ended up in the mere medical handling of marriage applications of members of the SS, an occupation to which he remained loyal until the end of the war, except for a period of war service.

Purely as one of the personnel, he comes under the supreme authority of the Reichs Physician Dr. Grawitz, to whom the physicians of the Main Race and settlement Office were subordinated in the year 1939.

In line with the reorganization of the medical department of the SS Poppendick then becomes leading physician retaining his position and occupation in the Main Race Settlement Office from 1941 on with the formal title of "Chief of the private personal Office of the Reichsphysician SS and Police" in order to permit Grawitz to create yet another office in a staff already too large.

This one connection as an occasional co-worker of Grawitz, which he remained even after his formal appointment as chief of the personal office, appears to the defense as the reason why Poppendick is sitting here in the defendants' dock.

The defense does not deny that some of the experiments referred to here in Court came through by way of Grawitz. It does not fail to recognize the position of the Prosecution, which, when it summoned the defendants to this trial, was misled by the high sounding title of "Chief of the personal office of the Reich Physician SS and Police" to the assumption.

That after Grawitz' death a co-worker with that title could properly share certain responsibilities, or at the very least be able to show a sharing of knowledge of the most important events related to this trial.

The fact that this tale, however, did not correspond to Poppendick's actual activities and position in Grawitz' office could not remain concealed even from the Prosecution in course of the presentation of the prosecution documents and the testimony of their witnesses, as well as later in the presentation of evidence for the Defense. In spite of the fact that ample documentary material was available to the Prosecution, and it was in a position to call witnesses in unlimited numbers from everywhere, the material given in

evidence is surprisingly insignificant and is of a kind which has extremely little in common with the matters mentioned in the indictment.

An explicit description of my position with respect to Count I of the indictment is contained in my written argument so that I can spare myself here the trouble going into further details in this matter. It may suffice to suggest that the notion of conspiracy used in this trial is probably entirely untenable from a legal as well as an actual viewpoint. As for Counts II and III of the indictment it cannot be maintained seriously and with legal consistency that the defendant, Dr. Poppendick, carried out the experiments named in the indictment, ordered them or supported them. The Prosecution, to be sure, in a summary of its closing brief contended: "He supported such experiments and several were instigated by him".

And thereby laid it on pretty thick even from their point of view. In Part II of its argument, in which it refers to the individual experiments, it presented no conclusive evidence that even upon critical examination actual support for even orders to make experiments can be attributed to the defendant.

Essentially, what the prosecution wishes to prove under Counts Two and Three is knowledge of the experiments discussed here in court. A support for my case the logical deductions from the Milch judgement appeared quite serviceable to me which stated the following prerequisites for knowledge of the experiments and a consequent responsibility according to our Counts Two and Three:

1) It must be proved that the defendant in question had knowledge of criminal experiments.

2) That the defendant, on the basis of his knowledge,

know that these experiments were criminal in aim and execution.

3). That he had this knowledge early enough to be able to take steps to prevent the experiments.

4). That he had the power to prevent them.

These prerequisites for a juridically significant knowledge in the sense of Counts Two and Three are stated verbatim in Judge Mussmanno's concurring opinion (page 92, German Text), and also in essence in the actual Milah judgment (pages 2 and 3).

The defense will state its case regarding the experiments discussed in the closing brief of the prosecution in the same order:

1. Incendiary Bomb Experiments. The prosecution asserts that reports revealing the criminal nature of such experiments were sent to Poppendick. It does not assert that Poppendick knew of these matters early enough to be able to prevent them.

In its final written statement the defense has proved that Poppendick could have had no knowledge of the incendiary bomb reports and that the evidence presented by the prosecution is not sufficient conclusively to prove the contrary.

Even if we admit that the defendant Poppendick saw such an incendiary bomb report with photographs after the experiments were already concluded, however, how is he then to undertake steps to prevent the experiments?

Even the knowledge of the incendiary bomb experiments which the prosecution alleges he had would not suffice to make the defendant, on the basis of this alleged knowledge responsible according to Counts Two and Three for execution of the incendiary bomb experiments.

II. Hormone Experiments. The prosecution asserts that Poppendick ordered these experiments and consequently had knowledge of them before they began.

Regarding these so-called experiments, which were not mentioned in the Indictment, the defense has been quite exhaustive. It believes it has proved:

- 1) That the alleged hormone experiments were not criminal experiments but a method of treatment already recognized in medical science;
- 2) That this method of treatment was in no way dangerous; that no fatalities occurred or are conceivable;
- 3) That the orders for these experiments emanated from Himmler and Lolling, but that the single letter with the signature "By order, Poppendick" is by no means an order that these experiments should be undertaken, but is a letter in which Grawitz tells Dr. Ding to assist Dr. Vaernet in the preliminary chemical research by giving him laboratory material, after Dr. Lolling had asked Grawitz for this assistance.
- 4) That no regular experimental reports went from Dr. Vaernet to Poppendick.

Since this method of treatment was not criminal, and since furthermore the defendant Poppendick could not regard the aims and execution of this method of treatment as criminal, how can he be held particularly responsible according to Counts Two and Three because of this alleged knowledge.

III. Typhus Experiments. The prosecution asserts that Poppendick asked Krugowsky to tell Ding to begin typhus experiments with sulfonamides from the research department Vonkennel, and bases its contention on documents NO 1182 to NO 1185.

These facts may be true, but the prosecution is forgetting the following:

a. Professor Vonkennel asked the Reich Physician to find him a clinic with soldiers infected with typhus, at which Vonkennel's already sufficiently tested sulfonamide drug was to be further tested. In other words, he wanted to have the director of a typhus clinic, which was not available to himself, carry out a normal clinical test such as is undertaken daily in large hospitals.

3.) The Reich Physician requested such opportunity from the competent hygienist, Mrugowsky.

5.) The measures necessary for this purpose were initiated. Whether such clinical experiment was actually carried out, cannot be gathered from the entire body of evidence introduced.

4.) This contemplated clinical experiment, even from the purely factual point of view, has nothing to do with the typhus experiments of Dr. Ding dealt with before this Tribunal.

So far, the intermittent activity of Poppendiek by order of the Reich Physician constitutes no connection with criminal experiments. Accordingly, all four suppositions of complicity through knowledge, which might be of importance within the scope of Counts II and III of the indictment, are missing.

The prosecution further contends that Poppendiek was aware of the typhus experiments proper of Dr. Ding which have been discussed in detail here.

The defense has, in its closing brief, in sufficient detail expressed its opinion concerning this contention, being able to prove beyond doubt that Poppendiek was not in a position to have such knowledge since he neither attended the lecture of Dr. Ding at the Third Consulting Conference, nor could he, from the Document No. 582, Prosecution Exhibit 286, the publication of Ding on Acridin, gather that the foundations of this work were allegedly criminal experiments. Neither has the prosecution been able to raise any justifiable objections against these two last-named facts.

IV. Sterilization Experiments. The prosecution maintains,

without being in possession of the necessary documentary evidence, that Poppendick was familiar with the criminal sterilization experiments performed by Glauberg, and that they were even supported by him.

As previously during the taking of evidence, so also in its closing brief the prosecution attempts to confuse the two groups of pertinent features: Prevention of female sterility, i.e. treatment of SS finesses who had become sterile through disease, and the actual sterilization experiments of Professor Glauberg. This confusion must be ascribed not least to the erroneous translation.

Therefore, the task of the defense, in the detailed exposition of its opinion on this question, consisted in separating these two groups of facts properly from each other, in actual accordance with the evidence introduced.

Whoever knew about Glauberg that he was a physician for treatment of female sterility is not, through this knowledge, forced to possess knowledge also of Glauberg's other activity, performance of sterilization experiments.

So far this mere assumption of the prosecution that Poppendick must have known also about the sterilization experiments of Professor Glauberg cannot possibly be maintained, in particular as no evidence to this effect is available.

Consequently, the defendant Poppendick cannot be charged with a special responsibility for the sterilization experiments when not even positive proof of his knowledge of these experiments could be produced.

V. Sulfonamide Experiments. The prosecution maintains that Poppendick learned about the experiments prior to their completion and supported them.

As to the last-named contention of support, no conclusive evidence has been produced which could in any way be applicable to this form of participation.

Concerning the first contention of knowledge of the experiments before they were completed but after they had started, I may be allowed to refer in general to my detailed exposition on this alleged knowledge of the sulfonamide experiments in my closing brief. Let us, however, for once assume that the contention of the prosecution is correct: that Poppandick really had learned of the sulfonamide experiments through the intermediate report of Professor Gubhardt. The question is: did he get this knowledge in time in order to have the experiments stopped?

Part of the experiments are described already in this intermediate report, even though the more difficult experiments were carried out only subsequently. Undoubtedly the possibility of preventing the following experiments must still have existed.

But did the defendant Poppandick, in his position at that time of occasional assistant, possess the power to do so? This particular question must undoubtedly be answered with "no" in view of my subsequent exposition concerning the position of the defendant.

VI. Phlegmon Experiments. The prosecution maintains that Poppandick must have known about these experiments. To what extent this contention is not true I have discussed in my answer to the closing brief of the prosecution. But let us assume for once that Poppandick had really, through the final report of Dr. Grewitz, learned about the phlegmon experiments, was then this knowledge obtained early enough to establish the possibility for him to prevent the

experiments? This can be denied without further argument since the experiments described in this report were already completed.

It is consequently not possible to consider his knowledge, alleged by the prosecution, to be legally significant in relation to Counts II and III of the indictment.

VII. Polygal Experiment. The prosecution maintains that Poppandick must have known about these experiments and even encouraged them.

The last-named contention has been supported by no pieces of evidence.

Now, concerning the contention of knowledge, it appears to the defense above all important to separate clearly on one side the polygal experiments of Dr. Floetner and, on the other hand, the experiments of Dr. Rascher, in connection with which shootings are said to have occurred although it is not possible to know for sure, on the basis of the evidence produced, whether they were actually carried out. Here I am interested only in the blood coagulating experiments of Dr. Floetner described by the prisoners Neff and Ruzengruber who participated voluntarily as completely innocent and customary. I here refer to my exposition in answer to the closing brief of the prosecution.

On the basis of the evidence produced by the prosecution and the defense, not even a well-founded assumption to the effect that Poppandick must have known about the blood coagulating experiments of Dr. Floetner can be entertained. Still less can he be charged with a special responsibility.

THE PRESIDENT: Counsel, as you are starting a new subject of your argument, the Tribunal will now be in recess for a few moments.

(a recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Counsel may proceed.

DR. BOEHM: Mr. President, your Honor, I am now coming to VIII of my statement, Malaria experiments.

Here again the Prosecution maintained that the defendant Poppendick must have known about Professor Scilling's malaria experiments.

As to the entries in the diary, Sievers did have reference to Poppendick. In his affidavit Sievers, as well as Poppendick himself, in the witness box, have pronounced their opinion on this matter. Their statements are undisputed. From no evidence in possession of the prosecution can knowledge of allegedly criminal activity on the part of Professor Schilling be deduced. Even if one were to admit that Poppendick had heard of these experiments early enough, it cannot be proved that he had the power to prevent them. More about this later.

IX. Sewster Experiments. The Prosecution neglected in its closing brief to assert that the defendant Poppendick knew anything of these experiments. Now is there any evidence whatsoever that he did. Consequently I do not have to enter upon this question.

X. Freezing Experiments. The Prosecution asserts that the defendant Poppendick had knowledge of the dry cold experiments before their beginning, and of the wet cold experiments after their conclusion. I believe that in my closing brief I have sufficiently proved that Poppendick could have had no knowledge of the wet cold experiments. Moreover, such knowledge would be of no importance in determining a particular responsibility according to Counts Two and Three, because at the time of the Grawitz-Pascher discussion, to which Poppendick was later called, the wet cold experiments had already been concluded. So far as the dry cold experiments are concerned, it can be unmistakably seen from the evidence presented by the defense that in this conference there was undoubtedly discussion of additional experience in cases of freezing suffered by troops in the East; this experience was to be collected; and by no means was there discussion of intended experiments in concentration camps. Even if we were to grant that Poppendick found out about criminal

dry cold experiments at this conference, before they began, where is the proof that he really, on the basis of his official position, was in a position to stop these dry cold experiments?

II. Epidemic Juridice Experiments. Here again the Prosecution in its closing brief neglected to assert that the defendant Poppendick was guilty. It merely asserts that at the time that these allegedly criminal experiments took place Poppendick had long been an important associate of Grewitz's.

Since no responsibility, according to Counts Two and Three, can be deduced from such assertions without substantiating proof and without legal significance, I need not enter upon this question.

If I have dealt with the individual groups of experiments in the same order as in the closing brief of the Prosecution, I have not done so in order to agree that the groups of experiments that are not mentioned in the indictment, so far as they here pertain, namely, hormone experiments, phlegmon experiments, and polygal experiments, are of legal weight within the frame of Counts Two and Three. On the contrary, I refer you to my statements on this juridical problem regarding the experiments that are not mentioned in the indictment.

The defense recognizes the experiments that are not mentioned in the indictment, in the event that they really were criminal, only so far as it depends on the defendant's knowledge of them whether the defendant is guilty or not under Count Four.

So far as the already treated experiments are concerned, it is apparent that knowledge on the part of the defendant or, more than that, support, an order, or execution by the defendant has not been proved.

The time at my disposal does not permit me to refer to the exhaustive treatment of these counts of the indictment in my closing brief.

In view of all these deductions from the evidence put in, I reply, with reference to the charges under Counts I, II, and III, for the acquittal of the defendant Poppendick.

I am all the more justified in making this application that I am

in the position in what follows to prove that the defendant Poppendick's position was not that which the Prosecution ascribed to him, furthermore, that Poppendick also in his position in Grawitz' office did not have the power to prevent not yet concluded criminal experiments if he obtained knowledge of them. What I am about to say appears to me of great importance with reference to Count IV.

The Prosecution describes the defendant Poppendick in its closing brief as "a very old member of the SS" and as "closest and most trusted collaborator of Grawitz." Aside from the fact that a member of the SS who entered the organization only a few months before the National Socialist accession to power cannot be described as a very old member, the fact is not disputed that Poppendick joined the SS in 1932. But was he the closest and most trusted collaborator of Grawitz? In 1932 through a purely inner office-transfer in the SS, Poppendick came under the Reich Physicians Authority. After his return from the front in 1941, Poppendick, in addition to his main activity as doctor in the Sippement, became at the same time an occasional collaborator of Grawitz. This parallel activity in several capacities, during which the work with the Reich Physicians always remained the least important of all his activities, continued until 1945. Even the Prosecution has granted in its closing brief that the defendant's activities remained the same before and after the reorganization in 1943. It thus agrees with the defendant that despite the title "Chief of the Personnel Office of the Reich Physicians SS and Police" Poppendick's main activity still took place in the Marriage Bureau of the SS, and that he was only incidentally Grawitz' occasional collaborator. The Prosecutor has said that the defendant called himself nothing more than Grawitz' messenger boy, this expression is certainly incorrect. But on the other hand, one cannot conclude simply from the defendant's rank in the SS that he must perforce have occupied a leading position in Grawitz' organization. The defendant owes his rank and his promotion only to his activities in The Race and Settlement Main Office, in which he was appointed leading physician in 1941.

Nothing proves this more conclusively than the recommendation for promotion, phrased in exaggerations, which Grawitz made in 1944 (MO-1120, Exhibit 544), in which he states, first of all, that the defendant joined the SS in 1931, although he really joined in 1932, and in which also he places Poppendick's activities in The Race and Settlement Main Office in the foreground and deals in hollow phrases with Poppendick's activities as Director of the Personal Office. The Prosecution themselves have said that the adjutant and the secretary were given the unimportant work to do - then what work remains for Poppendick to do, in view of the slight amount of work there was in Grawitz' staff?

Nothing shows better than the file notes of the letters sent out by Grawitz, in comparison to the respective periods of time, how few official letters were sent out by the Reich Physician. One may believe the Defendant when he says that Grawitz gave him this title, "Chief of the Personal Office", with the following words:

"I" (Grawitz) "shall continue to handle the small amount of mail together with my secretary. You" (Poppendick) "can go on about your business in the Race and Settlement Main Office. I just want to keep this 'Personal Office' so that I can use it in some way later. But so that this office is not taken away from me, I have to have someone to whom I can give this title."

The secretary as well as the adjutant were with Grawitz all day, while Poppendick in general continued to work at the Marriage Office.

If Poppendick had really been the close and confidential associate of Grawitz and even, together with Gebhardt and Mrugowsky, as the Prosecution alleges, one of Grawitz' three most important associates, then why did Grawitz make him a Leading Physician in the Race and Settlement Main Office at all, although Grawitz knew very well that then he would not have Poppendick working for him any more? Why did Grawitz in 1942 call Dr. Wille back from the field for the post of Chief of Staff which he intended to set up, although Poppendick was in Germany and it

certainly would not have been difficult for Grawitz to have Poppendick released from his work with the Marriage Office of the SS? Why did Grawitz only assign one clerk to him and the office of the Chief Dentist together, if Poppendick was really Grawitz' closest and most confidential associate?

Why did Poppendick not represent Grawitz whenever he went on an official trip or on leave? Why did he not make Poppendick his adjutant; then he would have had his alleged closest and most confidential associate with him daily.

Why did Grawitz give Poppendick no general authority to issue regulations or orders, which would have been binding on coordinate or subordinate offices? Why was this supposed most confidential associate only in a concentration camp for one hour once during the war?

Why did Poppendick never accompany the Reich Physician on official trips?

I could go on with these questions indefinitely, in order to lead the idea of the Prosecution, which is not attested by a single document, ad absurdum. One would imagine, in the closest and most confidential associate of Grawitz a different position from the one which Poppendick held as occasional worker for Grawitz.

In no case, however, did the Defendant Poppendick - and herewith I come back briefly to the questions on Counts II and III of the Indictment - hold a position under Grawitz such that he could have prevented experiments which Himmler, for example, wanted to carry out, if he had learned of them in time.

If the Tribunal in Case II considers it impossible that a man like Field Marshal Milch had the power to prevent experiments of Luftwaffe medical officers, if he had had knowledge of these experiments in time, how then can one conceive the idea that an occasional associate of Grawitz, who worked in Grawitz' office only now and then, could have had influence on the execution or non-execution of any experiments which were ordered? The various descriptions of Grawitz' character all agree on one point - that Grawitz didn't allow anybody to strike a bargain with him,

foremost for fear of Himmler for whom he cherished a dog-like loyalty (The obedient dog retrieves the hare.") and that not one of Grewitz' collaborators succeeded to obtain even a minor confidential position which he could have used to exercise a mitigating influence on the course of events. At the end of my trial brief I went into that

whole complex at great length; I therefore can content myself with that short reference.

Within the framework of Count No. IV the membership of an organization declared criminal by the International Military Tribunal is not decisive alone, but, according to correct legalistic view, the additional requirement must exist that every individual accused member thereof must have had knowledge of or must have participated in crimes committed by this organization after 1939. It is the task of the Prosecution to prove their allegations (cf. my legal statements in my Closing Brief). The Prosecution certainly has taken on this task in our proceedings and they have tried to prove that the defendant had knowledge of certain criminal experiments. As far as I have stated my point up to now concerning the question of knowledge of criminal experiments, I have already dealt with it as far as it concerns the defendant Poppendick. I may, however, state once again that the hormone and Polygal experiments are to be dismissed as non-criminal from the very start, in the sense of the indictment, and that it could not be proved that the defendant had any knowledge whatsoever of criminal sterilization, typhus, malaria, sea water and epidemic jaundice experiments, even if one reviews the evidence submitted with an utterly critical eye; that furthermore the knowledge of incendiary bomb, sulfonamid, phlegmone and freezing experiments could not be proved by the Prosecution beyond the shadow of reasonable doubt.

Particularly with a view to the experiments named just now it will be left to the judgment of the Tribunal whether or not a knowledge on the part of the defendant Poppendick of these experiments can be deduced, beyond certain vague assumptions and without the firm basis of undisputable facts, once one has arrived at the conclusion that these last named experiments have really been criminal.

Should the Tribunal be convinced that the evidence submitted is sufficient to deem the defendant guilty under Count No. IV, then I think it advisable to refer to my written statements about the scope of the punishment to be meted out. The judgment of the International Military Tribunal has given a certain guidance for future proceedings against members of criminal organizations concerning the measure of punishment. I quote:

"The Tribunal recommends that the punishment meted out to members of an organization declared criminal by the Tribunal on the basis of Law No. 10 should in no case be higher than stipulated by the Denazification Law for the American Zone, Nobody is to be punished according to both laws."

an over-all regulation of the problem even by precedent, has not been made yet in the American Zone, whilst in the British Zone it has been regulated by law in the sense of the recommendation quoted above. This Honorable Tribunal will then be the first of the Military Tribunal in Nurnberg to judge members of criminal organizations and thereby create a precedent for future cases.

If at the conclusion of my speech which briefly summarized the result of the evidence against the defendant Poppendick I may turn to the Tribunal I do so only with the knowledge that the High Tribunal will carefully scrutinize the evidence which has so assiduously been submitted and will decide about guilt or innocence of the accused without favor.

In this sense I plead for a just judgment of the defendant Helmut Poppendick whom I represent.

THE PRESIDENT: The Tribunal will now hear from counsel for the defendant, Rose?

MR. FRITZ: For the defendant Rose:

Mr. President, Your Honors:

In my opening address, which I had the honor to deliver before you on 30 January 1947, I did express the hope, that the evidence might prove that the defendant Rose neither took a part in the planning nor in the performance of the medical experiments which are under indictment. Now after the closing of evidence, you, Your Honors, will have to examine and to decide whether my hope has been fulfilled. Before you retire to consider the verdict, I wish to say to you that I do not think I was wrong in the conviction then expressed, and that for the following reasons:

1) As far as the allegation is concerned that my client took part in a conspiracy for the comital of war crimes and crimes against humanity, I have explained in the closing brief which I submitted on behalf of the defendant Rose, why my client could not have had a part in such conspiracy for reasons of law and of facts.

Concerning the meetings of the consulting physicians which Mr. Mc Haney considers as typical meetings of conspirators, I did write:

The participation of the defendant ROSE himself at the consultant conferences is shown clearly in his printed lectures lying before us and his remarks during the discussions at these conferences. From them it is quite clear that the activity of the defendant ROSE at these conferences was purely scientific and in no way objectionable.

To this must be added that, after DING'S lecture at the third consultants conference in the year 1943, in which the latter reported concerning his experiments on human beings in the concentration camp of Buchenwald, Professor ROSE protested publicly against the undertaking of such experiments, a fact which I shall have to go into more closely later on. This uncontested fact is not in any way in keeping with the behaviour of a conspirator.

Furthermore the lecture which the defendant ROSE delivered on 17 February 1944 - in wartime therefore - in Switzerland to the

medical association at Basle speaks against his participation in the alleged conspiracy. In this lecture he reported not only concerning his own DDT - research, but discussed also, among other things, the typhus experiments carried out on human beings in Buchenwald by Ding. This lecture, which caused a stir in medical circles abroad, both in neutral and hostile countries, and a further lecture on the same subject, which he delivered in Turkey in the summer of 1944 - also in war time - are the best proof that Professor ROSE was aiding in his work at helping the whole of mankind - without distinction between friend or enemy - in the combating of epidemics. Thus for instance the manuscript of his Basle lecture was immediately, with his consent, put by the Swiss at the disposal of the international Red Cross and, through this, at the disposal of the medical service of the allies, so that the experiences mentioned in it encountered in combating typhus and malaria should benefit all without distinction. Here it is clearly shown that Professor ROSE acted, not as a conspirator, but as a free doctor and scientist, which might almost have led to criminal proceedings being instituted against him for treason.

At all events it is seen both from my previous detailed arguments as also from those which I still have to deliver when speaking of the malaria and typhus experiments, that the defendant ROSE in no case belonged to the plotters. But one who is said to belong to the group of conspirators must surely have a share in the plot. For in the case of conspiracy surely only he should answer fully for the actions of others who - even if only in a subordinate position - has taken part in the formation of the plot. From this, however, it must be concluded that whoever does not take part at all in the shaping of a common plan, can also not bear full responsibility for what others have done. Thus if proof is lacking that someone has

taken part in a common planning, then too it cannot be established either that he had a share in the alleged conspiracy. For there must be a limit to collective responsibility. I am of the opinion that the common plan just forms this limit-Whoever does not belong to the planners does not belong either to the group of conspirators.

The Prosecution wants to hold my client responsible for the malaria experiments of Dr. Schilling in Dachau. My point is primarily that you, Your Honors, for technical reasons alone are unable to examine all of the essential material.

In the indictment no charges to this effect are raised against Professor Rose. He has not been indicted at all for this matter. It is not enough for the Prosecution to have made an oral accusation against my client in the course of the trial. Only a new indictment could form the basis for a material decision. In the event the High Tribunal should not believe this phase of the law, I shall in my closing brief turn to the question as to whether the supplying of the serum for tropical diseases constituted a participation in this research. I have among other things stated:

The Tribunal will have to decide whether these above mentioned activities of the Department of Tropical Diseases of the Robert Koch Institute under the management of the defendant ROSE or his own activities constitute participation in the meaning of the Penal Code in the accounts of Professor SCHILLING on the part of the defendant ROSE. In my opinion this decision can only be a negative one, for the following reasons:

The delivery of material necessary for malaria research such as anopheline eggs and malaria cultures was one of the official duties of the Department for Tropical Diseases of the Robert Koch Institute. This Department has a section which dealt exclusively with these matters. This can be seen from both the yearly reports of the Robert

Koch Institute, and from the report covering the third conference EAST of consulting specialists discussing work projects. (dritter Arbeitstagung Ost der Beratenden Fachleute). Deliveries of this kind are internationally common practice and were never denied by the defendant ROSE. It is also common practice to use the organs of human corpses for the carrying out of scientific research. The supposition for such deliveries are, that they are requested either by well known institutes or by renowned research scientists. It cannot be denied that SCHILLING, a co-worker of Robert Koch and a member of the malaria commission of the League of Nations, was famous as a malaria research scientist. In a case of this kind the non-delivery of such material would have been an express violation of traditional practice and of official duty. It is also not international usage for the orderer to be questioned about the intended use of the material before its delivery.

Concerning the question as to whether my client should have certain misgivings to give the material to Schilling, I state that the defendant Rose himself is a well known malaria research scientist. Malaria research was the main study of his department at the Robert Koch Institute in Berlin and also later in Pfaffersode. Professor Rose as an experienced malaria scientist knew of course that this form of malaria is not a dangerous one and that no complications are to be expected from it.

"I formed the opinion that the experimental work carried out by Dr. SCHILLING was in rather a different category from the majority of experiments which have been described in the trials at Murnberg and elsewhere. It appears that this investigations were carried out carefully and with a reasonable regard to the safety of the subjects. As he was working with benign tertian malaria the allegation that three hundred people died in the course of the experiments is obvious-

ly grotesquely untrue."

Thus, Your Honors, the famous Entomologist, Professor Kenneth Mellanby at the famous Hygiene Tropical Institute in London wrote me a letter dated 9 July 1947 after the close of the evidence. He stayed in Nurnberg a week during this trial. Rose's special field is, as you know, malaria research, and regarding it's concept and method of research, I said in my closing brief that Rose personally was the prototype of a worker above reproach in the field of malaria research and with regard to his care for the well-being of his malaria patients, as shown by the investigations undertaken by the competent American authorities. He risked his own life, in order to assure the orderly handing over of his Malaria Research Institute in Pfafferoide to the Americans - and also to insure continued regular care and medical treatment for his patients. It would be completely incomprehensible if such a man were to be made responsible for the technical errors and negligence of another who was not even under his influence.

In the Indictment my client is charged with responsibility for the typhus experiments of Professor Hagen and with participation in them.

In order to reach a decision concerning the question whether a punishable behavior on the part of the defendant Rose is established, the court will have to examine the following: •

1) Whether Professor Rose, in his capacity as consulting hygienist with the Medical Inspection of the Luftwaffe, had any commanding authority or the right and obligation of supervision at all over Professor Eugen Hagen, at the University of Strasbourg and

2) Whether the defendant Rose was a participant in the experiments with typhus vaccine conducted by Hagen in the concentration camps at Mauthausen and Schirneck in a legally relevant form, in which case it can be left completely undecided whether Hagen himself liable to punishment or not.

In my closing brief and in my written reply to the closing brief of the Prosecution I have examined this question carefully and especially in regard to the exchange of correspondence between Hagen and Rose. Because of the lack of time it is completely impossible within the frame work of this plea to explain these difficult questions. I, therefore, resist from doing so but shall at least say this.

In my opinion it is absolutely impossible, according to the evidence submitted in this direction, to arrive in our trial at a decision which would eliminate all mistakes. The questions under examination which were raised by the actual course of events as well as by their connection with medical problems, are so complicated that at this juncture they simply cannot be decided by medically untrained jurists without the expert opinion of a suitable and non-

partisan medical expert. It is regretted that such an expert opinion is not available. One cannot take the responsibility for punishing a man like Rose who had so vague a relationship to Hagen, before in a trial against Professor Hagen the question has been decided whether the latter himself has made himself punishable.

Finally, my client is made responsible in the Indictment for typhus experiments in the Concentration Camp Buchenwald and is charged with participation in these experiments.

During the verbal proceedings the Prosecution has made the following assertions in this connection:

On 29 December 1941 Professor Rose took part in the conference at the Ministry of the Interior during which the matter of the carrying out of the experiments for the purpose of testing the effectiveness of typhus vaccine was decided. In order to substantiate this assertion, the Prosecution referred to the affidavit of the Kapo (camp policeman) Arthur Dietzsch, dated 26 December 1946, who of course did not take part in this conference and who is now, after five years, repeating what he claims to have heard at that time. In this connection the following is to be said:

1) First of all, Professor Rose has, during his direct examination vehemently denied that he ever took part in such a conference or that he ever heard of it before the end of the war.

2) In the report on this conference, written by Ministerialrat Bieber, those who attended are listed. Professor Rose, however is not among them.

3) In the entry of 29 December 1941 in Ding's diary, which deals with this conference and lists the participants, Professor Rose's name is missing.

4) Neither does Professor Reiter, of whom the defense as well as the prosecution submitted an affidavit, mention the defendant

Rose in this connection.

These above mentioned facts alone are entirely sufficient to refute the contradictory assertions of Kapo Dietzsch.

The Prosecution furthermore claims "that through the defendant Rose the Robert-Koch-Institute delivered the bacilli" with which part of the persons to be experimented on in Buchenwald were infected. This statement was made after the entry on 26 January 1943 from Ding's diary had been read out. In his affidavit of 26 December 1946 the Kapo Arthur Dietzsch also claims under figure 5 that the material for infection had come from the Robert-Koch-Institute in Berlin. But neither the above mentioned note in Ding's Diary nor Dietzsch state that the material for infection was delivered through the defendant Rose. As is well known, the typhus department of the Berlin-Koch-Institute, it can only have been done through Professor Gildemeister, especially since Dr. Ding formerly received his training in the typhus department and not in the department for tropical medicine of the Robert-Koch-Institute. If the Prosecution links Professor Rose with this, then we have here merely a statement for the correctness of which no proof has been submitted and the incorrectness of which already is revealed by the fact that in his department Professor Rose did not have any typhus virus at all.

On account of Professor Rose's one and only visit on 17 March 1942 to the Department for Typhus and Virus research in Buchenwald, the Prosecution made statements which are as incorrect as they are unproved. Thus the Prosecution claimed first of all that Professor Rose made this visit in his capacity of originator of the plans for the experiments. The real reason for this visit, however, is revealed by the testimony given by Professor Rose himself. He accepted an invitation Gildemeister had commanded in order to dispel the scruples Rose had in regard to the experiments which till then were carried out on volunteers. The Prosecution's further assertion that during this visit Professor Rose took part in the infection of persons to be

experimented on, is incorrect also. In reality this one and only visit took place as the entries in Ding's diary reveal beyond a doubt, on March 1943, in the middle of the process of carrying out the experiments, at a time when all persons to be experimented on had fever already, while the infections had been carried out as early as the period between 6 January and 3 March 1942.

If Professor Rose had really participated in these infections, his one and only visit to Buchenwald could never have caused in him the reaction it did, for, as numerous testimonials and affidavits have proved beyond a doubt and as by the way, the Prosecution, too, has admitted this visit in accordance with his basic convictions pertaining to this problem also expressed elsewhere, caused him to protest not only to the Reich Health Leader Dr. Conti, and to President Gildemeister, but also before a large circle, that is publicly, during the third convention of medical consulting specialists in May 1943, against the carrying out of the typhus experiments in Buchenwald. He never denied this visit to Buchenwald, since exactly this visit was the starting point for his efforts to abolish experiments on human beings as a basic condition for the approved use of the vaccine.

These protests play an important part in judging the Prosecution's accusation against Professor Rose that for the carrying out of a series of experiments in Buchenwald he is supposed to have put at the disposal of Dr. Ding typhus vaccine, produced according to the process discovered by Combiescu and Zotta (the so called Bukarest vaccine). To prove this assertion the Prosecution first of all rests its accusation on the entry from 19 August 1942 to 4 September 1942 in Ding's diary, in which it is stated among other things that this vaccine had been made available by Professor Rose who in turn had received it from naval physician Professor Hugo of Bukarest. In this connection the Prosecution furthermore intro-

duced a letter, dated 16 May 1942, from Mrugowsky to Rose in which Professor Rose is asked to send the vaccine. The rest of the letter reveals that this related to typhus lung vaccine. Therefore it can be assumed that the samples of the Bukarest vaccine were meant. The Bukarest vaccine is a vaccine produced from the lungs of dogs. It is true that at first sight the contents of this letter, in connection with the above mentioned entries in Ding's diary seem to justify the Prosecution's statement. A closer examination of the facts, however, shows that conclusive proof of the accusation that Professor Rose made available the Bukarest vaccine for the purpose of testing it on human beings in Buchenwald, cannot be considered as having been established. As I mentioned before, it cannot be ignored that as late as May 1943, that is one year after he had received Mrugowsky's letter of 16 May 1942 and about half a year after the series of experiments with the Bukarest vaccine had been carried out in Buchenwald, Professor Rose protested at the convention of the consulting specialists against the carrying out of these experiments. He did so immediately after Dr. Ding had, at this convention, delivered his lecture on the results of his experiments carried out in Buchenwald, including those with Bukarest vaccine. Had Professor Rose really made available the Bukarest vaccine, then it can be assumed almost with certainty that Dr. Ding who was known to be very angry, would, in answering the protests, have remonstrated Professor Rose with having himself (Rose) put the Bukarest vaccine at this disposal. But nothing of the sort happened. We know from witness Kogon that for days after he had returned to Buchenwald, Dr. Ding occupied himself with Professor Rose's protest. To this witness he expressed his anger about Professor Rose in very drastic words and told him that at the advisory convention there remained nothing for him to do but to defend himself by stating that a "top secret" matter was involved and that he had made it clear to Professor Rose that there

existed fields of activities which even Professor Rose would have to hold in respect. It seems obvious that he would have told the witness Hogen that he could not understand what was the matter with Professor Rose since Rose himself had put the Bukarest vaccine at his disposal. But Ding reported on the testing of the Bukarest vaccine not only to the 3rd advisory convention but also in his publication in the magazine for hygiene. Here, too, he failed to mention Professor Rose's name. On a foot note, however, he expressly referred to his cooperation with Professor Gildemeister.

After all this I am of the opinion that the Prosecution's statement that Professor Rose put the Bukarest vaccine at disposal for tests in the series of experiments in Buchenwald has not been proved.

The incidents discussed just now which are connected with the testing of the Bukarest vaccine happened in 1942. But the war continued and it exacted every day and on all fronts, from friend and foe as well as at home, many thousands of human lives, many of them as victims of a typhus epidemic, the existence of which was admitted by the Prosecution. It is a historical fact that for thousands of years epidemics, and especially typhus, have played a devastating part in the life of nations.

After the danger of typhus had already been a serious problem during the world war of 1914/18, a catastrophe of unprecedented proportions occurred in Russia afterwards.

Professor LAPASSEVITCH estimates that during 1918 - 21, 25 to 30 million became typhus casualties of which 21/2 to 3 million died. During this trial, not only my client, but also other persons well equipped with expert expert knowledge have commented on the catastrophic typhus situation during the last war. In this connection it might suffice to refer to a letter, dated 3 February 1942, from the president of the Regional Labor office of Westphalia, according to which until shortly before the date of the letter about 15,000 Russian prisoners of war died of typhus every day.

It stands to reason that in view of this catastrophic typhus situation the responsible authorities tried by all means to increase the production of vaccine. It was clear that it would be impossible to produce by the weigl process in sufficient quantities the vaccine obtained from the intestines of lice, which is known and recognized as being effective. The defendant ROSE has clearly described the difficulties of its production. In this situation, that is in September 1943, ROSE was commissioned by the brigadier general SCHRIEPER to go to Copenhagen and to try to enlist the Statens - Serum Institute there in the production of typhus vaccine. There he came to know the I. SEN murine typhus won from the liver of mice which, according to Professor IPSEN, was not only far more effective than all hitherto known vaccine, but which also could produced more easily in larger quantities. Professor ROSE did not succeed in inducing the Statens-Serum Institute to produce typhus vaccine from lice. But everybody will approve it, after his return from Copenhagen, he considered it his obvious duty to inform the experts in Germany of the knowledge which he had gained on this trip about IPSEN's vaccine which so far had been unknown in Germany. He did so in his report on his mission dated 29 September 1943. Convinced of the correctness of the explanations given him in Copenhagen and in view of the enormous number of victims dying of typhus every day, ROSE asked LUKOWSKI on 2 December 1943 whether

there still existed a possibility of testing the vaccine in
Buchanwald.

As it can be clearly seen from the earlier mentioned report
on his official trip, Professor ROSE tried to get no less than six
different departments interested in the Ipsen vaccine. Therefore it
appears credible that, until document NO-1186 was submitted to him,
he no longer remembered having written in this matter also to BRUGOWSKY
directly. The prosecution reproached Rose and said that he should have
remembered an act of such importance as the sending of this letter to
BRUGOWSKY. By that it wanted to undermine the credibility of my client.
However, the prosecution forgets in this connection that Professor
ROSE concerned himself with the necessity of testing this vaccine when
already drafting his report on his official trip of 29 September 1943.
The facts that the name BRUGOWSKY is not being mentioned in this
report on his official trip, and that he, ROSE, never learned
about the testing of the Copenhagen vaccine in the Buchanwald series
of experiments and about the result of his test, may be the reason
for the assumption, before the letter to BRUGOWSKY was submitted to him,
not to have realized the idea which he may have had before, namely to
contact also BRUGOWSKY on account of this vaccine.

However, after this document has been submitted, it is to be
assumed that this inquiry was finally the reason for the order of
the "high physician SS GRAFIZ" to test Copenhagen vaccine for its
effect on human beings in the Buchanwald experimental series, without
ROSE participating any more in the conferences and decisions concern-
ing this matter. It is not known which other departments were also
connected with this matter and whether the vaccine which ROSE had in
possession was used at all. Professor ROSE himself does not remember
to having supplied the SS with any of this vaccine and the witness
BLOCH, who distributed the vaccine tests to the individual departments,
does also not know anything about it. Dr ORSKOV says that even the
quantity given to ROSE was small. Therefore, it remains doubtful, whether

the vaccine which was later used in Buchenwald on the experimental series for the testing of the Copenhagen vaccine came from ROSE at all.

When judging ROSE's inquiry from LUBOMIRSKI, one has first of all to consider, that ROSE was always convinced that the prisoners which were assigned for the carrying out of these experiments in Buchenwald were exclusively criminals who were legally sentenced to death. This was assured to him not only by GILHEMISTER and CONTI, but this assurance was also especially given by Dr. Ding during the third meeting of the consulting physicians in May 1943, after ROSE protested, during the meeting, against the carrying out of experiments on human beings in Buchenwald. One reason for the fact that Rose did not doubt the correctness of these explanations was, that during his visit in Buchenwald, he was told that among the experimental subjects were two prisoners from the prison of Berlin Moabit, who suffered typhus already prior to their being sentenced to death.

For the rest, disregarding the above fact entirely, it is objectively without doubt that the Reich Criminal Police selected and assigned only prisoners in protective custody and habitual criminals - that is exclusively arch-criminals - of German nationality, for the carrying out of the experiments with the Copenhagen vaccine in Buchenwald. This is first of all clearly evident from the document NO-1196-Exhibit 321.

Professor Rose as hygienist knew, of course, already at that time that also outside of Germany criminals were used for perilous medical experiments and the physicians and researchers participating in these experiments were not subjected to legal proceedings. Based on his research work of many years he, for instance, did not only know about the experiments of STRONG with live plague bacillus and his Beri-Beri experiments, but also about other examples from world's literature. In addition, in the field of typhus he naturally knew about the fundamental infection experiments of Yersin in Saigon, of SERGENT and

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assistants in North Africa, of Mc GAVIA and REA TON in the USA. In addition, he also knew that the protective effect of typhus vaccines were re-tested by BLANE and BALTAZARD in Morocco and by VEIWEILLAS in Mexico, who reinfected virulent groups. Thus, after his personal point of view was not adopted, Professor ROSE could have no scruples after all these facts, to tell the departments commissioned by the State with the carrying-out of such experiments about the possibility of an increase in the production of vaccines with improved effect.

Hon. Professor ROSE encountered the fact that the civil department, competent for the admission and testing of new vaccines in Germany, did on no account agree to admit new vaccines during the epidemic, if they were not previously tested on human beings.

He tried - and this has been established without a doubt - to use his influence against this attitude and to change it. But he remained unsuccessful, even though he applied to a wide circle of experts. The majority of them surely agreed with his point of view. However, no one of them, including ROSE, had the possibility to dissuade the really decisive departments as e.g. HOSCHKE, GRAETZ, COETZ and his expert advisor, GILLESPIER, from the decisions they had taken in this connection.

Thus, he had to put up with the facts. As hygienist of distinction, he regarded himself as partly responsible for the combating of typhus. One can not demand from him that at that time he should not have tried to do the utmost for every possible progress in the development of typhus vaccine during this during this catastrophe which demanded millions of victims, and this just because he did not agree with the testing principles of the responsible Governmental departments. The inquiry ROSE's to HUGGARE of 2 December 1943 must be judged according to these points of view. This inquiry shows clearly that ROSE or ROSE could not give an order for the carrying-out of such an experimental series in Buchenwald. It even shows that at that time

he was not even informed about the position of the typhus experiments in Buchenwald.

If Professor ROSE would have omitted to point out the possibility for an increase of the typhus vaccine production which became known to him, he would have acted against his duties towards the general public. This omission would not have resulted in a personal disadvantage for him, but in a disadvantage for the bulk of those endangered by typhus. Thus professor ROSE acted as he did, in order to protect a great number of persons of German foreign nationality from a serious danger.

As already stated, Professor ROSE tried repeatedly, and harder than it could be expected from him, to change the principal attitude of his civilian superiors. He did not succeed in this, because here he had no influence on decisions concerning typhus. However, in his direct military sphere, he successfully carried by his moving influence and he recommended and gained the admission of a number of vaccines which were not tested first on human beings.

The action of the defendant ROSE, which can be seen from his sending the letter of 2 December 1943 to Bragowsky, I can judge legally as follows:

Considering the mere facts, only that person can be the perpetrator of, or accessory to, a punished action who himself performs executive actions.

I have already demonstrated obviously that neither during his single visit to Buchenwald nor during the following period of time did the defendant ROSE participate in the actual execution of the typhus experiments in Buchenwald.

Considering the case subjectively, only he can be the perpetrator or accessory who intends to perform the deed as his own.

Above all, it has been positively proved by his attitude, after he had learned that experiments of such a nature were conducted in

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compliance with orders by an organization of which he was not a member, namely the SS, that the defendant ROSE did not consent to the typhus experiments in the Buchenwald concentration camp, but that, on the contrary, he disapproved of them, so that all the less he intended the actions there as such. This declining attitude is furthermore shown in his behaviour after his single visit to Buchenwald and after Dr. DING's report on the third Deliberate Meeting in May 1943.

According to the foregoing independent or necessary action of the defendant ROSE as regards the typhus experiments in Buchenwald is to be eliminated.

It remains to be examined as an abettor or aiding person.

First of all, as far as abatement is concerned, in my opinion the influence upon the will of the perpetrator, i.e. in form of a desire or a suggestion or a request, can be considered as such. However, if the

perpetrator has decided positively already to commit a certain deed, it is no longer possible to influence his will in this way and thereby it is impossible to induce the perpetrator to commit the crime.

As to the pre-meditated intention of the abettor, it is required that he also actually premeditated all essential characteristic features of the punishable action.

In case the crime committed does not conform to the one which the abettor pre-meditated, the abettor dolus is lacking.

For the case of the defendant ROSE it ensues in this instance that he did not commit a deliberate and punishable abetment through his letter to MRUGOWSKY of 2 December 1943. For at that time in Buchenwald the experiment series for testing of typhus vaccines had been in operation since almost two years, and all persons concerned with the planning and execution of these experiments were firmly decided, prior to the time when the letter had been mailed, to conduct the experiment series in the way planned by them, and, it is true, with the intention to test all typhus vaccines on condemns to their protective effect which had not yet been adequately tested. Furthermore, the defendant ROSE could not know that the persons used for these experiments were not exclusively criminals who had been legally sentenced to death and who had volunteered voluntarily. I shall explain this in detail in another passage.

If this eliminates a participation of the defendant ROSE by abetting, it remains to be examined whether he knowingly aided in the execution of the typhus experiments in Buchenwald by mailing his letter of 2 December 1943.

There is no doubt that, it is true, such assistance can be rendered by psychical means, e.g. by giving an advice. But for the purpose of fulfilling the requirements of the existence of the state of affairs of punishable assistance it is necessary that the assistant in some way psychologically influence the perpetrator in the sense of inducing the perpetrator to commit the crime, in which instance it may suffice if thereby the last checks and objections are eliminated. But

this result is the minimum which is to be demanded of the psychical influence of the assistant, to be able to speak of assistance in the criminal sense.

Beyond that the deliberate rendering of assistance must be in connection with the concrete deed which was committed. If the perpetrator actually commits another deed than that pre-meditated by the aiding person, the way of acting of the aiding person is not punishable.

As I have already explained in detail when examining the question of abetment, that the typhus experiment series in Buchenwald had been in operation for a long time and the persons concerned with the execution of these experiments had been firmly decided to conduct same until such a time as the result at which they were aiming had been achieved. So, the letter of the defendant ROSE was not fit in any way to have a psychologically influencing result.

Moreover, it showed pre-mediation as to a deed other than the one actually committed, namely the execution of medical experiments on human beings by utilizing criminals legally sentenced to death, who had reported voluntarily. Thus, when mailing his letter to MRUGOWSKY he did not do so under full realization of the unlawfulness of these experiments on human beings. He is not guilty of a subjective guilt and therefore he is not guilty of punishable assistance.

Thus, on the basis of the legal detailed explanations just made, I come to the conclusion that the defendant ROSE has participated in the execution of the typhus experiments in the Buchenwald concentration camp neither as perpetrator, nor as abettor, nor as assistant. Furthermore, that he did not participate in the planning of same and that he did not even approve of the execution through the SS, of which he was not even a member.

So the pre-requisites as listed under Article II, par. 2 of the Control Council Law No. 10 are lacking, which should be existing if the defendant ROSE were to be considered as guilty.

In the case that the Tribunal is not going to share my legal concep-

tion which I explained just now, and should answer the question of participating of the defendant ROSE in the typhus experiments in the Buchenwald Concentration Camp in a criminally relevant form in the affirmative, it is furthermore to be examined whether the defendant ROSE has reasons on his part which eliminate the culpability of his actions or guilt, or both.

One must arrive at this result if one considers it to be proved that the defendant ROSE acted in a emergency.

Such a emergency exists if there remains no other way than committing an action which constitutes the seemingly state of affairs of a criminal action for the purpose of protecting a legal value, or to fulfill a duty imposed or acknowledged by the Law.

In all civilized states the internal legislation and jurisdiction deal with the solution of problems of the criminal law which arise from cases of such emergency.

In my closing brief, I will give a brief comparative application of International Domestic or Emergency Law, together with assumptions or details, in order to be able to affirm such an emergency. I come to the following results:

The principle of recognizing an emergency within the limits drawn here as a reason for exculpation, which exempts the person acting in a state of necessity from punishment, consequently is so firmly anchored in the legal consciousness of our time that it must be accepted as a generally recognized legal principle of the civilized Nations. As such it can claim to be recognized in this trial too.

But there is yet a second reason for this. Recognized International Law accepts the legal concept of "self preservation". Theory and practice agree that the infringement of laws and prohibitions of International Law are admissible when such infringement is emergency to every actual urgent danger which threatens the essential values of life and no other way is available to remove this danger.

Substantially this is nothing else but the emergency concept of

the domestic law, except that the prerequisites for the existence of the right of self preservation according to International Law are somewhat more lenient than those required for a state of emergency according to Domestic law.

The cases usually quoted in this connection in literary works refer almost without exception to violations of the rights of territorial sovereignty of another state for the purpose of warding off some evil to one's own sphere of legal values. Never has it been asserted, however, that the case of the rights of self-preservation was restricted to such cases. There is moreover no intrinsic reason whatsoever, why this right should not be asserted also in the case of some dangerous epidemic.

In this respect the right for self preservation seems even more justified, since the squashing of the typhus epidemic in the further course of the last war was not only in the interests of Germany but also of Germany's enemies, their civilian populations, their armies and especially their prisoners of war in German captivity to whom the epidemic had already spread and might easily have spread further, thus afflicting the whole world. Therefore the objection - which by the way is rejected also by the expert witness for the Prosecution, Professor IVY, that the necessity of war does not justify a violation of rights cannot be raised here. Because after all, fighting this typhus epidemic was not a war operation in the interests of Germany only, but it was directed to check a danger for the whole world which had arisen during the war.

The leading manual of International Law by Oppenheim expressly confirms that the right of self-preservation is admissible also for the elimination of states of emergency caused by forces of nature.

It will have to be examined whether in the case of defendant ROSE all of these prerequisites are present in order to have to affirm a state of emergency.

I have already pointed out before that during the second half of

the year 1943 an actual danger to the life and health of millions of people in Germany and the Eastern territories under German occupation did exist due to typhus. This fact is absolutely indisputable and has already been accepted by the Tribunal, when the President, on the occasion of the hearing of Witness HAAKEN at the session of 18 June 1947 declared:

"The Tribunal is quite aware that typhus is a very serious and dangerous disease and constitutes a great menace to humanity and that it was a very great danger and menace to Germany during the last war. We have repeatedly heard about that and it's not denied."

Hundreds of thousands have already succumbed to this disease during the last war up to the year 1943 as can be seen simply from document NI-5222 - Rose Exhibit 56 already mentioned by me. A, the history of typhus with which defendant ROSE was already familiar of course at that time shows and as he further knew from his own experience from his activity in combating typhus in Eastern Asia, there existed at that time the danger of a catastrophe of undreamt of magnitude.

It was moreover certain that the danger could not be stemmed by delousing. Vaccinating all endangered persons also was not possible to the extent which would have been necessary, as the vaccine of Weigl which was known to be effective could not possibly be produced in the required quantity. As regards the other known vaccines the necessary experience concerning their effectiveness was lacking, to undertake the responsibility of their production on a large scale and to use them.

To await the epidemiological evaluation of these vaccines was not feasible. It would have taken years and claimed untold sacrifices of human life. A conclusive clarification of the problem, alone in the experiments with animals, is not possible for scientific reasons. The competent scientists did not agree at all on the effectiveness of the various vaccines. For the authorities responsible for the checking of this danger, there remained nothing else to do therefore in order

to clarify all doubtful questions with the least possible delay, but to give orders for these vaccines to be tried out on human beings. The carrying out of these experiments on human beings consequently was a necessity caused by the typhus catastrophe which was spreading as witness IVY also has recognized necessities conditioned by the war.

It had become impossible to find volunteers for this experiment.

Incidentally it might perhaps not at all have been justifiable from a moral as well as from an ethical viewpoint to use volunteers for this life endangering experiment. For the German Penal Code contains in its Art. 316 the following stipulation:

"If somebody has been prevailed upon to kill by the express and serious demand of the killed a sentence of imprisonment of not less than three years is to be pronounced.

The attempt is punishable."

Since "express and serious demand" is a much narrower definition than mere consent, it follows quite clearly that according to the German material criminal law the killing of a person even with his consent is not exempt from punishment. According to this it would be quite impossible in Germany to carry out a life endangering medical experiment on a human being at all, except if the state makes available the person on whom the experiment is to be carried out, for instance in the form of a criminal sentenced to death, and thereby assumes the responsibility protecting the experimenter from criminal proceedings as the state also does in the case of its soldiers who during the war must kill intentionally in action.

Thus also in the present case 43 persons in protective custody and professional criminals were made available by the Reich Criminal Police Office in Berlin for the carrying out of this experiment, 30 of whom were selected and used for the testing of the Copenhagen vaccine.

Taking into consideration the average death-rate with typhus, there could be counted on the deaths of a few persons in the course of this experiment in the worst case, whereas on the other hand the lives of

tens of thousands were saved, and that quite independently of whether the Copenhagen vaccine stood the test or not. For if it had proved good, it would without doubt have been produced and injected in large quantities. If, contrary to the expectations that had been nourished with regard to this vaccine after the animal experiments, it did not prove good - as it then actually was the case - then its production and injection without a sufficient protective effect was prevented and therefore likewise the lives of unnumerable persons were saved. Thus, there can be no doubt at that - already with regard to numbers - no inappropriate means was used for the averting of an imminent loss and that the loss to be expected due to the experiment was by no means greater than the imminent loss.

The defendant ROSE could not be expected to watch inactively how the catastrophe was completed. In this connection there must be taken into consideration that he, in his capacity of hygienist in an exposed position, was under the obligation to do everything in order to help avert the imminent danger known to him. This obligation to help hundreds of thousands of persons threatened by typhus was on the other hand faced by the obligation always to act according to the ethical principles of the medical profession. There can be no doubt at all that the defendant ROSE has suffered extremely under the conflict of these obligations and has seriously and carefully weighed these two obligations. This is warranted by his personality described to us by different parties in the homeland and abroad. If he decided in favor of the former then he regarded it at that time to be his primary duty. Not the least reason for his making this decision was that he had spent the greatest and most decisive part of his career as a research scientist not in Germany but abroad. Thus he knew that also abroad life-endangering medical experiments have been carried out in numerous cases on volunteers with whose genuine voluntary status may be regarded as highly doubtful and on criminals sentenced to death.

For in this connection I wish to stress emphatically - and that

relates to the subjective part of this case - that the defendant ROSE at that time proceeded from, could and had to proceed from the belief that with the Hakenwald typhus experiments exclusively criminals were used who had been sentenced to death and who had volunteered.

In my closing brief I explained in detail why the defendant had to hold such opinions and I come to the conclusion that a punishment of the defendant ROSE is out of the question, not merely because of a lack of participation in the experiments on human beings in a form relevant to penal law but also because he acted in a state of emergency.

Your Honors, the two Prosecution experts, Professor IVY and Professor LEIRAND, both have testified that medical experiments on living human beings may only be carried out in accordance with the principles of medical ethics only on a voluntary basis. Nevertheless we have learned from numerous witnesses and documentary evidence, that this principle has not always been observed in the various epochs of medical research. This may have to do with the fact that no formal regulation by law has been found for this subject in most countries including Germany.

In Germany the highest government authorities held the opinion during the last war, that in times of war, which demands from every citizen the sacrifice of his life, the criminal may be forced to submit in the interest of the state to a medical experiment dangerous to life, since by the fact of his imprisonment the criminal is protected against the dangers of war to a large extent. The defendant ROSE unfortunately could not exert influence on this attitude. As far as has become known during these proceedings, my client is one of the few physicians, who fought this opinion during the Nazi dictatorship. Not only did he protest against this attitude toward his superiors, but he even repeatedly denounced in large circles before numerous listeners in sharp manner, that these human experiments for the testing of vaccines should be discontinued. May I remind you in this regard that Professor HORING told his friends that he could not understand at all, why professor ROSE

should be indicted. For it was ROSE, the only one, from whom he himself knew through personal experience that he had had the courage to oppose publicly the human experiments during the reign of HITLER. ROSE was the one who then maintained the good old traditions of German physicians.

Not only the Chinese Minister of education CHU CHIA-hua spoke for Professor ROSE and described him as an honorable man, but from the most various countries statements of research workers and other personalities of public life, were sent to me during this trial only the smallest part of which has been included in my document books. All these letters show that it would cause the deepest concern if this eminent scientist should be sentenced in this trial as a belated victim of the Nazis.

Would it not be tragic beyond comparison, if this very man should be sentenced by you for just that against which he fought?

THE PRESIDENT: The afternoon session of the Tribunal will hear from counsel for the defendants, Ruff, Bomberg and Becker-Freysong.

MR. WILLE: (Counsel for defendant Wetz.) Mr. President, I would like to tell you that I just went to the translating department to find out about things. It was considered that the order would be followed that the case of Rose would come after the cases of Bomberg and Wetz. Now, this business about the translation is the following: the cases which have been translated are Bomberg, but not Ruff and Wetz, but there are some other cases which have not been translated. It is also doubtful if the translation can be completed today or even tomorrow. I may perhaps tell the Tribunal the following cases are ready: Bomberg, Pokorny, Beiglbock and Schaefer. These cases are at your disposal, but the case of Bomberg has not been translated nor have the cases of Schaefer, Brock, Hoven, Becker-Freysong, Ruff and Wetz. These translations will be forthcoming later, but the Tribunal might decide about the order of the cases.

THE PRESIDENT: Well, counsel, what arguments did you state have

been fully translated so the Tribunal might have them?

DR. WILLE: Those ready are Romberg, Pokorny, Beiglbock and Schaefer.

THE PRESIDENT: The Tribunal had been advised that none of those translations were ready. If those translations are ready so the Tribunal may have them on the bench, then this afternoon we will proceed to hear counsel for Pokorny, Beiglbock and Schaefer. I presume that arguments on behalf of Ruff and Romberg should be presented in sequence if possible. If there is further time available this afternoon, then we will proceed with some other arguments. The translators have all the translations even if they are not ready for the Tribunal. This afternoon we will proceed, if the translations are available, with the arguments for the defendants Beiglbock and then Pokorny.

THE INTERPRETER: This is the interpreter. The translation of the Beiglbock plea is not yet completed, perhaps it would be best to put that at the end.

THE PRESIDENT: Very well, we will proceed then with the arguments for Schaefer, Pokorny and Beiglbock if these translations are ready.

The Tribunal will now be in recess until 1:30 o'clock.

(a recess was taken until 1330 Hours.)

Afternoon Session.

THE MARSHALL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal will now hear from counsel for the defendant Schaefer.

DR. FELCKMANN: (Counsel for the defendant Schaefer)
Mr. President, Your Honors: I need not deal with the questions why the general, political and organizational back-ground as alleged by the prosecution does not apply to Schaefer. I need not do this as, for legal reasons, the legal term conspiracy is not applicable in the Trials before Military Tribunals in Nurnberg.

In the question which concerns us solely, namely whether Schaefer has been guilty of a crime against humanity as listed under Control Council Law 10, we must take into consideration the principle of all civilized nations quoted reportedly in the verdict of the I.M.T. Guilt under criminal law is a personal one. Therefore no punishment without guilt.

In view of the vagueness of the definitions of participation listed under Art. II, 2 a legal bridge can only be established through a very strict subjective commission of an act, by a very strict examination of the whole of the evidence as to whether and why the defendant can be found guilty, and whether and why a charge can be raised against him from a given situation taking into consideration all circumstances which have had influence on his psychology, his acts and commissions. Finally, the question has to be investigated whether - provided the defendant has conducted himself in the manner he is now expected to - other consequences would have resulted, i.e. the actual event could have been prevented.

What do we find? if we examine such facts as are

applicable here?

Schaefer, called up as a soldier in 1941 and promoted to Unterarzt, i.e. not an officer, was given the order of dealing with problems connected with Sea-Distress and in particular with the problem of thirst.

It was with great pleasure that he carried out that order because he knew that to solve that problem would once and for all finish the tortures suffered by all shipwrecked people all over the world.

He settled down to his work with that scientific thoroughness for which I have offered detailed proof. By reading the entire literature for months it became possible for him, at the orders of the Chief of the Medical Inspectorate to hold a lecture on thirst and the fight against thirst in Sea-Distress at the Nurnberg Conference of 1942. The lecture was a purely academic one and not a report on experiments on human beings. The prosecution, it is true, alleged on 12 December 1946 the opposite, but the complete document #401, Pro. Exh. 93, proves that this allegation is wrong (rei Schaefer Exh. #17). I should like to mention here that no proof has been furnished for the fact that Schaefer has heard, or heard about Holzlochner's and Rascher's lectures at that meeting.

In dealing further with the sea-water problem, Schaefer made investigations, which had already been made by I.G. Farben. Through scientific collaboration with that firm a method was finally found which made sea-water drinkable without any injury to health. Many chemical and pharmacological investigations and experiments lead to this result. There was no need for experiments on human beings, because on the basis of all known scientific methods of research, Schaefer realized that this method was entirely innocuous.

The method was called "Wofatit SW", "I.G. Method" or "Schaefer Method".

In principle and its composition it is, with a very few small deviations the same method as invented by the American Dr. Ivy and used by the U.S. Forces. This was confirmed by Dr. Ivy as a witness.

The Schaefer-Method was completely finished by the end of 1943 and the Inspector of the Medical Service of the Luftwaffe, Schaefer's highest superior wanted to introduce it in the Luftwaffe.

The Technical Office, another branch of the Luftwaffe opposed the introduction, giving as a reason that there was not sufficient silver available to produce the method.

The important men in the technical Office, Oberstingenieur Christensen and Stabsingenieur Schickler insisted on the introduction of a method invented by Berka. This consisted of food-sugar which removed or lessened the salty taste of sea-water, but made no change in the salt-contents.

I have proved how Schaefer, since the beginning of this plan fought against the "Berka-Method" as a piece of charlatanism.

He wrote a damning report on the results of experiments carried out by Oberstarzt von Sirony on behalf of the Technical Office on voluntary patients of a Luftwaffe hospital with the "BERKA-METHOD". Schaefer had been ordered to carry out this examination by his superior officers in the Medical Inspectorate.

The result of Schaefer's attitude was that the Technical Office and officers of the Luftwaffe suspected him of being saboteur.

SCHAEFER realized what that accusation meant in the

third Reich and the fifth year of the war. He knew of cases where Medical Experts were persecuted by the R.S.H.A. (i.e. the Gestapo) merely for deviating scientific opinions in important military matters.

Nevertheless he explained his opinion that the "Berka-Method" was pointless in the conferences of 19 and 20 May, when the suggestion was made to test that method on concentration camp inmates. As an extreme warning he explained that the Berka-Method would lead to death on the 12th day at the latest. This has been proved by prosecution document #177, Exh. #133 and Schaefer Document, Exh. #19.

That was all he could do in his position as non-commissioned officer, as the smallest among the resplendent uniforms of the 13 higher officers.

Schaefer does not make a decision in that conference. That is not done in military circles. The highest office chief's order and command. The defendant Schaefer does not receive the order to make experiments on concentration camp inmates. He is not even being sent to joint the commission investigating the conditions of the experiments, because he is well known as an opponent of the whole affair.

Another chance to prevent these completely senseless experiments, as Schaefer saw it, on human beings with the "Burka-Method", be it in concentration camps, be it in Luftwaffe hospitals, passes by. On 29 May 1944 the world famous Prof. Eppinger of Vienna stated that Burka's idea, regarded as utterly obscured by Schaefer namely that his (Burka's) method would drive sea-water through the body without any harm, was not entirely wrong. Three other professors, famous medical experts, concurred in Schaefer's opinion. This is proved by Schaefer documents Exh. 19, 35, 36.

This lost Schaefer another medical reason openly to oppose the carrying out of these experiments.

No law in the world can demand that Schaefer should have done more than he has done, if one takes into consideration the situation in Hitler Germany and Schaefer's particular position, and his rank in a correct and understanding manner.

Never was there in the conferences mentioned in the prosecution documents a word said or an order issued that the Schaefer method was to be tested on concentration camp inmates. Only for that would Schaefer have been responsible. In view of the excellence of his method he would not have shied clear off that medical responsibility although he would not have approved of using concentration camp inmates.

The experiments with the "Burka Method" for which he was not responsible were carried out without his help and his knowledge. It is therefore not incriminating for him that he listened to the lecture of Prof. Beiglbosck which completely revealed the uselessness of the Burka-Method.

I make the motion therefore to acquit defendant Schaefer and release him from custody.

THE PRESIDENT: The Tribunal will now hear from counsel for the defendant Beigelboeck.

I would ask that some German counsel kindly notify Dr. Sauter that his argument on behalf of the defendant Ruff will be called following the argument submitted by Dr. Steinbauer.

DR. FELCKMANN: May I add something else, Mr. President, my colleague Gawlik has asked me to report to the High Tribunal that the time which has not been used up by my plea, he would like to use up himself.

THE PRESIDENT: That is probably true, but the Tribunal does not extend the time saved by one counsel to any other particular counsel.

DR. STEINBAUER: For the defendant, Beigelboeck:

Mr. President

Your Honors

Paragraph 5 of the Law for the Protection of Animals of 24 November 1933, Reich Legal Gazette I 987 prohibited interference with or treatment of living animals for purpose of experiments which are connected with considerable pain or damage to them, for the territory of the German Reich in it's entirety. While thus protecting horses and dogs, cats and rabbits, for reasons of humanity one did not shrink at the same time and at the same place from doing such things on human beings. According to the indictment, human beings were cruelly murdered by the tens of thousands in the extermination camps, and all this was diabolically done in the name and under the cloak of science or misusing a method connected with science. And there was the aggravating circumstance that most of the

victims were defenseless people whom political fanaticism or the war had led into the hands of their torturers. It is therefore not to be wondered at that all these cruelties which in addition have been exploited by propaganda in some countries produced new ways of contempt and indignation and fanned the thoughts of hate and vengeance smoldering below the coals to bright flames!

Under such circumstances it is made very difficult for the judge, who is only human, after all, to arrive at a just judgment. That is where the defense must come in, and where it will be their high moral duty to contribute their share to scrutinize with dispassionate objectivity the subject of this trial, which is so rich in horrors, and to arrest the glance of the eye for the guilt and for the responsibility of each one of the 23 defendants. The external circumstances alone entail the great danger that the deep shadows which seem to fall on the one or the other of the defendants will equally darken the whole lot of them.

The Chief of Counsel, however, said in his opening speech: "We cannot be content with proving that these crimes have been committed and that certain people committed them. Our deep responsibility towards all peoples of the earth is to show why and how these things occurred." As a defense counsel, I profoundly agree with the Chief of Counsel. This trial, with its toil and labor, must not be confined to the mere purpose of punishment, it must also contribute to making such crimes impossible forever and everywhere by exposing their causes and connections. The Chief of Counsel, however, sees the cause in National Socialism alone, the criminally demented error which has wormed its way into every sphere of German life, and the consequences of which were devastating. Though it is correct that National

Socialism magnified certain pathologic degenerations of our Western form of society up to paroxysm, it is not the only cause and the evil springs from much deeper sources. To expose them all would go far beyond the frame of this trial. We have to be content with drawing a sketch of the situation. We all feel we are treading on swaying ground and are in the midst of a serious crisis of our order of society. Its causes are twofold: spiritual-moral and social economic which overlap, supplement and connect one another. The heirloom of our forebears seems to be used up: scepticism steps into the place of faith, nihilism enters the place of reverence, a certain spiritual vacuum is seemingly bridged by activism, but everything becomes relative and the denial of all metaphysics is called positivism. Man is only a conglomeration of bones, nerves and muscles, and entirely relinquishes his place as a soul-endowed individual. He marries according to selective breeding, he nourishes himself with vitamins and calories, his sensual life is hormone content, and his ethics is psychoanalyzed. The masses with their lack of judgment and their intrusion step into his place and show their preference for the super-dimensional. Everything becomes unique and great! The economic consequences are proletarianization and mechanization. But human dignity and real freedom step into the background. Technique celebrates triumphs, but therein lies the danger.

And science? It also celebrates triumphs. Natural science has reached undreamt of heights. Man tears asunder the veils of nature, penetrates into the stratosphere, smashes the atoms, creates nitrogen out of the air and uses it to fertilize the soil, and synthetically produces fuel, gold, and jewels. Aye, the science of our time has

become void of poesis and void of soul. It has offered but little resistance to its subjection to politics, and the Austrian Wilhelm Roepke, who lectures at the University of Geneva, is justified to quote from Rabelais in his book "The Social Crisis of our Time.": "Une science sans conscience n'est que ruine de l'ame."

The German people, after so many years of suffering and a long way of the end of its trials, refutes the cruelties as set forth in the indictment and speaks with Montaigne: *J= hais cruellement la cruauté!* "I cruelly hate cruelty!" Therefore it would understand if the mouth of the victors would pronounce a severe judgment also in this trial, but it demands that the millenium-old commandments of the Decalogue should also elsewhere be valued more highly than the biologism of our present day. For, while talking of peace, the scientists of the world are mobilized to create newer and more effective weapons, millions of Germans expelled from their native soil arr hither and thither, hungry and cold, whilst woman and children who were frozen to death were carried out of the unheated refugee trains from the East, and millions of prisoners of war suffer a fate which is one single outcry of violated human dignity.---

All this had certainly to be contributed to the question put by the Chief of Counsel.

Before I go into the details of the charges against my client Dr. Beigalboeck, I would like to talk shortly about two problems which seem to me important for the judgment.

- 1) The legal basis of the indictment, and
- 2) the question of the medical-ethical basis of this trial, or, in short, the relationship : Physician and research-worker.

But one can go a step further and determine whether the Control Council law as a whole can form a basis for the indictment. When the law was published it aroused a lively discussion, and I remember that the American chief prosecutor in the IMT trial, Justice Jackson, severely criticized the law.

For Control Council Law No. 10 is a law of the occupying powers and goes back to international law. The Prosecution even refers to this law in this trial, when they accuse the defendants in Count 10 of violations of international agreements, especially the Hague Convention of 1907 and the Convention on the Treatment of Prisoners of War (Geneva 1922). With respect to the justification of the Control Council in issuing this law, it has been pointed out that through the unconditional surrender and the termination of the Reich government, the rights of sovereignty were transferred to the occupying powers. (Kelsen) Others refer to the French principle: *Où est le drapeau, est France*, that is, the occupying power brings its own law into the occupied territory.

On the other side, it can be said, that even in case of an unconditional surrender the vanquished does not lose all rights. On the contrary, one reason for surrendering unconditionally may be that even in that case the standards remain which the civilized peoples of the earth have established to regulate international relations, such as those on the treatment of prisoners of war, protection of private property, etc.

This to refer to a particular case, also results from the Rules of Land Warfare of the United States of America. The German laws offer sufficient means and ways of punishing

war crimes and crimes against humanity committed. It contradicts his legal regulation to create new laws, without military necessity and about acts alien to the laws of the country.

Furthermore, it is impossible to return to acts and deeds of the past. In Proclamation No. 3 of 20 October 1945 of the occupying powers about the principles of reconstructing justice in Germany, it is expressly stated in II, paragraph 2, "Punishable responsibility only exists for acts declared punishable by law." This is, therefore, a solemn proclamation of the principle nulla poena sine lege.

In addition to that, the legal concept of conspiracy is entirely alien to our continental legal system. It is of American origin and originated from the fight against gangsterism.

But there is still some more to it: my client had nothing to do with the planning of a conspiracy, not even according to the indictment. Perhaps one might allege that by carrying it out he became an accessory later on and took a consenting part in it. Now Beigalbosok was a medical officer in the rank of lieutenant. Well, you can't call a soldier who carries out a military order of his superior a conspirator, if he remained at the place accorded to his rank. He did not make any plans with his superiors, but he only did within the framework of military regulations what his rank demanded of him. His activity during the war was governed by regulations from above which were independent of his own will. This fact alone speaks against the assumption of a conspiracy. What may be of interest to us from a penal-legal point of view is the question where are the limits which call a halt to

the military power of command. And thus I arrive at the second important legal question of this trial, as far as it concerns my client on the question of 'higher order'

I submitted proof that the defendant, Dr. Beigelboeck, has carried out the experiments against his will by order of his military superiors and as a soldier, and in my opening speech I referred to the judgment of the International Military Tribunal in Nuernberg, which created a precedent in this respect. In this present case, however, this question is of such decisive importance that it is absolutely necessary to discuss it once again in detail. To arrive at a correct solution we have to inquire how this question is regulated in the Military penal codes of important civilized countries. Since the defendant was a member of the German armed forces, let us start with German law. The problem is regulated in the German Military Code of 10 October 1940, Reich Legal Gazette I, p. 1347, Par. 47. Heading Par. 47 is the principle: "If by the execution of an official order within the frame of official competence a penal law is violated, the commanding superior is alone to be held responsible." If we take a look at the laws of other countries, we have first of all Art. 114 of the Code penal which says that a civil servant is excused if he acts by orders of his superior within the frame of his competence, where he is in duty bound to obey within the hierarchical system. Further let me refer to Art. 122 of the Italian Military Penal Code, to Art. 30 of the Swiss Military Penal Code, and to No. 11 of the 3rd Chapter of the British Handbook of Military Law.

Since the defendant is on trial before American judges, we would like to make an inquiry which point of view the American Law takes with regard to this question.

17 July-A-IL-14-9-Cook (Int.Katz)
Court I

The official "Military Law and Precedents" by Colonel
William Winthrop, Washington, Government Printing Office
1920, 2nd edition, says the following on page 296:

"Though obedience of subordinates is the basic principle of military service, it is still required that only a lawful command should be obeyed. Should the subordinate, however, be required to judge whether or not an order given by his superior is lawful, it would if adopted as a general principle, in itself overthrow all military discipline.

Exceptions are only cases of obvious violations of law, which, however can occur only seldom. Should the subordinate suppose that the order was lawful and authorized and consequently obey it, he can expect to be justified before a court-martial." Further Oppenheim International Law (London 1935) Vol II, p. 453 and further: Ernst J. Cohn "The Problem of War Crimes today in Transactions of the Grotius Society Vol. 26 (1941) pp. 125, 144.

Therefore, we say that in the interest of the striking power of the strict unconditional duty of obedience is the main rule is all military laws and only in very few exceptional cases can we depart from it. In addition to that we have to consider the quite unique conditions which the dictatorship in the Third Reich created during the war. It is evident from the documents submitted by the Prosecution that, next to Hitler, Himmler was the most powerful man in the Third Reich particularly during the last years of the war, and exercised unlimited mastery over life and death. Concerning experiments on human beings, he declared expressly that people who refused to carry out such experiments are "traitors to King and Country".

Whoever has been during the dark years in silence in the greater German Reich of Adolf Hitler, the landmarks of which were barracks, wooden huts, concentration camps and slaughter houses for humans, whoever has been within Heinrich Himmler's sphere of power, whoever went through the prisons and the interrogations of the Gestapo, whoever was frightened when his doorbell rings at an unusual hour, only he can full grasp what it means to offer resistance to such an expressly emphasized will of Heinrich Himmler.

In agreement with the Charter of August 1942, Article 2, 4 b of Control Council Law No. 10: "The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation." Already in my opening speech I referred to the judgment of the International Military Tribunal with reference thereto. It means that the law intends to say: The mere excuse with an order is insufficient; it has, however, to be considered as regards the measure of punishment, whether or not somebody commits a crime on his own initiative or receive an order to that effect. Responsibility would be the greater, the higher one stands on the rungs of the ladder of the hierarchy of the State. The soldier who is ordered to take part in a firing squad will hardly be held responsible for the sentence of the court martial. Unlike par 52 of the Reich Penal Code or Par. 2 of the Austrian Penal Law, this passage of Art. II, 4 b, does not exclude the general extenuating and mitigating circumstances. It will, however, be decisive whether or not somebody blindly obeyed the order or tried to evade it with all his power. For this reason the American Court in Dachau acquitted members of the guard of the concentration camp who volunteered for front-line service in order to get rid of an infamous job.

Professor Donnedieu de Vavre, one of the main trials of this law, says: "If you act this way then in the sense of individualism, the presentation of the International Laws, it is charged with incrimination to point out the discipline which is necessary for the State. Such laws should only be used with precaution.

If nowadays, in the midst of peace one would say "Baiglboeck should have shot himself rather than going into a concentration camp and making gas water experiments then this is a very cheap banality. It was Himmler who reigned in 1944 and apart from personal prosecution there was also the so-called next of kin responsibility. Baiglboeck didn't only have the responsibility for himself alone but also for his

wife and children. Here I can only repeat what the American Judge Musmanno said in his dissenting vote in the trial of Field Marshal Milch (page 96): It never was our intention and it never was suggested that he (Milch) should have chosen a way which might have ended with the loss of his life."

The Prosecution alleges the commission of war crimes by the defendant. Though this question is of no importance to my client outside the scope of conspiracy, because war crimes can only be committed on nationals of the Allied nations, I would still like, in principle, to draw a short sketch of the problem.

The law of nations is a legal system between states up to the present day. It serves the balancing of interests in international relationships. Violations of the law of nations can only be committed by states towards other states.

Finally, the indictment speaks of crimes against humanity. The charter and the judgment of the International Tribunal confine these crimes to the period of the war and to their connection with the aggressive war, and in this point Control Council Law No. 10 obviously transgresses its own basis and powers. Control Council Law No. 10 states in its preamble: "In order to give effect to the terms of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945, and the Charter issued pursuant thereto.....in order to establish a uniform legal basis in Germany....."

Serious offences against human dignity particularly cruelties and oppressions which cause general indignation and are usually organized from above according to plan and in great numbers, can therefore be regarded as crimes against humanity.

They can be committed both in war and in peace. It is however, questionable, who and which law is applicable to punish this offense in each individual case. According to the judgment of the International Military Tribunal in Nurnberg, the application of Control Council Law No. 10 seems to be excluded.

If we return to the experiments indicted and consider what is said above we have out of sheer respect for ourselves to exclude those activities, the aim of which was, as the prosecution alleges, not to cure but the extermination of human life. But the great majority of the experiments were evidently intended - this can't be seriously denied - to find new ways to cure diseases which hitherto had been a pertinacious scourge of mankind. The success connected with the experiments did not only bring a chance of recovery to the individual patient, but also meant a step forward in medical art and therefore a service to humanity, and therefore, an act of humanity. By the enumeration of a long series of experiments of the same nature the defense has proved that the Allies themselves were busy with the same problems. He who carefully followed the trial will therefore state the fact that the point of gravity has been shifted from the experiments themselves as to the question of the execution and particularly to the kind of experimental subjects. Therefore, the object of experiments on human beings steps into the foreground as the most important criterion for the judgment according to criminal law. If we therefore inquire whether or not these are crimes against humanity, we have to answer a further question, leaving out for the time being, narrower medically ethical points of view; how far is it legally decisive whether or not the experimental subjects are volunteers? Volunteer means to commit or to omit an act according to one's own will. The decision is up to the individual as an emanation of his freedom.

As long as mankind can remember, freedom was the goal of human hope, longing and desire, sometimes also a goal of human planning and activity.

But somewhere even freedom must have its limits. Edilion Bonaudi of the University of Perugia says in his book "Of the limits of the individual freedom. More than all it cannot be doubted that the limitations of individual liberty must be determined by the reasons of the society". It may be a democratic or an authoritarian state, the

freedom of the individual finds its limits within the sphere of power of the state. These limits will be drawn wider or narrower as the system of the state may be. Just now the commission for human rights of the United Nations is in session presided over by Mr. Eleanor Roosevelt. It is charged with forging the rights of man into the form of a law, which is to be accepted and ratified by all member states. The World Code is not only to define the rights of the individual, but also to limit the power of the state over the individual. What conclusion can we draw from that? In general, we have to refuse experiments on human subjects who are not volunteers, particularly on prisoners of war, the latter if only it goes counter to the clear standards of recognized international law. And still we will be permitted to discuss whether or not there are exceptions to this fundamental rule. The state which limits the freedom of the individual in order to make an orderly communal life possible has moreover the task of protecting the freedom of the individual. If this state should, however, find itself in a state of emergency, if it fights in a total war until the complete exhaustion of man and material for its very existence, then the limits of its power must be extended and in some cases different measures have to be applied than in peace. Before me I have tragic report: "Mission in the Fire of the Atom Bomb". And still the United States went this way in order to shorten the war considerably and prevent their own citizens from indescribable suffering. Now, I have submitted evidence that in the case of my client the experimental subjects were volunteers. The prosecution alleges in principle, that people can't volunteer in a concentration camp because the people were deprived of their liberty and were no longer able to freely determine their own will. But this is incorrect. For then it would not be permissible to carry out the numerous experiments which were mentioned by other defense counsels, in American penitentiaries and mental institutions without constituting crimes against humanity. There, too, the experiment subjects were not

at liberty, in spite of volunteering. The surroundings will always have a great influence on every determination of will and motives of the most heterogeneous nature (promise of freedom, pardon, improvement of food, etc.) will play a very important role.

I want to demonstrate this to a Military Tribunal by means of an example from military life. A Company Commander is given the order to take an enemy trench with an assault squadron. Since nobody volunteers for this duty, he chooses ten men. A younger man asks to be taken in the place of a selected married comrade. He is accepted. The entire assault squadron is killed. Here we have similar conditions. None of the soldiers were volunteers. Each one of them was under the compulsion of the permanent life danger in war, just even within this sphere of freedom of choice an act of voluntariness was possible.

As in count 15 of the indictment also the national criminal laws of those countries in which such crimes against humanity were committed are referred to, I shall at the end of my arguments briefly define the position of German criminal law applicable also for the Austrian Beiglboeck in his capacity of a Wehrmacht member, with regard to the question of experiments. Since no deaths resulted from the experiments, the laws concerning murder and manslaughter naturally are eliminated, and we are only concerned with the laws concerning bodily injury.

Paragraphs 223 and 229 of the German criminal code contain the laws to be consulted in connection with this case.

The scientific purpose is considered as being the justification for the experiments, in order to exclude the unlawfulness of bodily injury. In this connection, I quote the legal concept: If the state recognizes and promotes the scientific purpose, then all the necessary and appropriate means for its achievement are covered as far as the criminal law is concerned. With regard to this point, von Liszt is of the opinion that only the medical profession can establish what means are used for the promotion of medical science. Summarizing, it can be said that experiments conducted in accordance with the rules of the medical profession and with the consent of the subject do not violate the here applicable criminal law. I think I sufficiently dealt with the legal questions that are important for this trial, as far as this was possible considering the short space of time, and now turn to another point, namely, the question: Doctor and research worker.

Years ago, when times were better, I strolled through Hellen and stood on the ruins of Epidaurus. There, in the town of Asklepios, the priest exercised the medical profession, and the most important factor for healing a sick man was his belief in a higher power. Our present time, lacking these gods, has removed the priest's ash from the physician. The medical art, however, remained a sacred office and is full of responsibility.

Schoenbauer very justly says in his paper "The Medical Vow", "The choice the medical profession has taken a sacred office and has put his force, his health, and even his life at the disposal of the sick, in order to recognize their diseases, to cure and to help them."

The priest-doctors are now being confronted in some medical papers with scientists or medical research workers. Also in this trial, the attempt was made to construct a difference between physician and scientist to the disadvantage of the defendants. Within the framework of the defense, I briefly want to define my attitude in this respect. It is possible to evaluate correctly the proceedings only if one is acquainted with

the general attitude of the medical world with regard to certain professional questions, if one particularly takes into consideration the importance of human experiments for the scientific research and, thus, for the practical medicine and if, finally, one does not forget the spiritual currents of that time and the economic and political conditions. The problem of all this is not too difficult. However, it is not so simply as to conjure - with a pious raising of the eyelids - the ghost of old Hippocrates and to quote one sentence from the Corpus Hippocraticum as the Alpha and Omega of medical ethics. Let us recall how helpless Hippocrates was, when the plague killed hundreds and hundreds of his Attic fellow-citizens. At that time already the duty of a doctor, namely to treat the individual that turned to him for help, became the noble duty of a helper of the community.

Very justly says Schumacher, in his thesis, "About the Medical Spirit", Abendländische, Vol. 2, published by Johann Tsch, Neumann, Augsburg 1946, page 55: "In accordance with Hippocrates' ideal, the doctor's attention is directed to the welfare of the individual as well as to the welfare of the state. To place the welfare of the individual above the welfare of the community would have been just as contradictory to his sense for order as the opposite."

If one confronts the doctor with the scientist who, with the test tube in his laboratory, with the syringe or the surgical knife in his hand, walks over animal and human corpses, in order to satisfy fanatically scientific instinct, we very decidedly object to such a scientist. We also found this type in the documents of this trial in the person of Dr. Rascher, whose name casts a dark shadow over the material of the trial. Dr. Leibbrandt, the protector of medical ethics, would therefore have rendered a good service to German science if he, in his capacity as a psychiatrist, has pointed out that Rascher, this sadist and psychopath had nothing whatever to do with real science.

It is my duty as a defense counsel to emphasize unergotically that

it is not permissible to construct from local coincidences any connections between my client and Rascher and his system.

The scientific research worker sees his task in the discovery of the unknown, in order to equip the doctor with a new weapon in his fight for the human life. I briefly want to demonstrate with two examples why the modern medical profession cannot renounce the scientific research work that was impossible without great efforts and sacrifices: 1. Giving a brief description of the development of modern surgery; 2. Mentioning the school to which the defendant Beiglböck belonged as a pupil and a teacher. I do not give this second example in order to glorify my country, but because the particular influence of its teachers is decisive for the spiritual standard of the personality.

At the beginning of modern surgery stands the great figure of English surgery, Joseph Lister, whose great idea it was that the surgeon did not have to fight the inflammation of the wound, but to prevent its beginning caused by germs entering from outside.

Thanks to bacteriology, the anti-sepsis was changed into asepsis.

Over the entrance gate of the General Hospital in Vienna we read the words: "Saluti et solatio negrorum - Dedicated to the health and the consolation of the sick." These words not only demand highest accomplishment of the doctors's duties, but are the motive for the most successful work in the large field of medical research. Theory and practice joined in order to become a piece of living humanity. I would go beyond the limits of my task if I mentioned all the names that spread the glory of the Vienna University all over the world. But their penetration into the world of the unknown was always a hazardous enterprise, which demanded courage and sacrifice.

I want to quote the words of one of the great doctors, Professor Wagner-Jurek, who says in his book "Fever and Infection Therapy": "The vaccination against malaria was certainly a risk, the outcome of which could not be foreseen. It was dangerous for the patient himself and

this to a much higher degree than the treatment with tuberculin and other vaccines, and it also was a danger for the surroundings and even for the community."

And, on page 136: "Three patients died after having been vaccinated with blood being infected with malaria tropica and not with malaria tertiana. The tragic outcome of this experiment was discouraging, and only a year later could the author decide himself to proceed with the malaria vaccinations."

Nobody talks today of these victims, but Wagner Jauregg's revolutionary discovery is known and adopted in the whole world and has become the common property of all peoples for the benefit of suffering mankind.

Those doctors who knew that the fight against disease and death was a thorny path, were more than all ready to sacrifice their own lives.

The real scientist and the real doctor, therefore, do not oppose each other. However, the scientist must not forget that nature is the expression of the divine will and that only this cognition can save him from the "hybris", the boundlessness which for the Greek tragedians was the greatest vice of mankind.

More than all, the words of the greatest German physician, Theophrastus Bombastus von Hohenheim, called Paracelsus, must be applied for both scientist and doctor: "The doctor grows with his heart, he comes from God and is enlightened by Nature - the best of all the drugs is Love."

My learned colleagues have compiled a long list of documents on human experiments especially from the Western democracies. It would be unjust, however, to conceal the enormous benefit of the human experiment.

The fact that Paul Ehrlich dared to release his drug "Salvarsan" which had not yet been sufficiently tested, saved thousands from the dangerous consequences of one of the worst epidemics. The fact that Strong took the responsibility upon himself to carry out the probably very dangerous experiment with plague bacilli made it possible to vaccinate thousands of

persons and to save them from the almost certain death. The fact that Strong was in a position to prove that Beri-beri was a disease caused by a deficiency, and that Goldberger proved the same for pellagra, made it possible to fight this deficiency and to liberate entire countries from one of their worst diseases.

With regard to the criminal law, however, and the judgment of crimes against humanity, it is the decisive result that also in other countries, under the then generally prevailing medical and ethical convictions, doctors carried out similar or the same experiments for the benefit of scientific research or in consideration of a critical condition of their country.

If I further said that the surroundings had an influence on the doctor's position, I did not think of the second determining factor of our individuality, not of the material influence on the organism that might modify or mitigate the influence of the actual conditions at that time upon the decisions of a physician.

Concentration camp, militarism and peoples' court. Three important columns of the Third Reich. They have collapsed. They are not to be forgotten, however, when examining the guilt of the individual. Every German had to fear them in one form or another. And then came the war. War was once called "the steel bath of the peoples". Heraklit called it "the father of all things". I can only repeat the judgment of the IMT that "war is the evil itself". This is true to the highest degree for the last war. It was a total, a terrible war. Even the medical science on both sides had to assist warfare. I have before me the index of the best known scientific English periodicals from the war period "Lancet and Nature". Now, after the war, General T.I. Setts of the United States War Department and Professor T.T. Sinsteat of the British Supply Office have declared that the captured German scientific accomplishments during the war were of the greatest use for the economic progress of British and American industry. Even the terrible freezing experiments of Dr. Rancho

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proved to be of greatest use for America in the war against Japan. (See Document No. 31, Becker-Freyseng.) And what about us soldiers? We stood in the air-raid shelters, the Socialist beside the Party member. We did not complain. We saw villages go up in flames, innocent women and children become the victims of air raids. We saw our country, the Fatherland, in distress, and we believed, even if we hated Hitler and his followers like the plague, we had to fulfill our duty to our country to the bitter end. One cannot tell these things, they have to be experienced. In such times a doctor is placed against his will between Scylla and Charybdis, between his concept of his profession and his duty as a soldier. It is easy today to say with pathos from an academic chair: "nunquam nocere!" Now, this man does not say: "I was a member of the resistance, I was trying day in and day out to help persons who were racially and politically persecuted." He says: "Then, like everyone else, I merely did my duty."

Abraham Lincoln, one of the greatest Americans, said in 1862, in a speech before the American Congress: "The dogmas of quiet times ill sort with our stormy present. In the face of new events we must think and act in a new way."

With this I intend to conclude my statements about medical ethics, and repeat the words which Laek wrote at the end of his book, "The Doctor and His Mission": "If we want to abolish undesirable conditions in medicine, we must follow our conscience - to help and to heal, that is, today as always, the mission of the doctor."

Now to the experiments themselves in brief:

The Chief Prosecutor let the weight of the facts speak for themselves in other experiments, but because this is lacking in the seawater case, he resorted to poetry! He led us to the realm of Greek mythology and reminded us of Tantalus who was punished with eternal thirst and hunger because he served his son to the gods as food. I will follow the example of Mr. Tolfort Taylor and go one step further and lead you,

Your Honors, to Hall.

The prosecution does admit one point however. The purpose of the seawater experiments was not meant to be methods of killing and destruction, but had a very clear connection with rescue problems. (page 67 of the German transcript). The statement of the prosecution, however, that no tangible progress for modern medicine had been achieved must be denied most emphatically. As an answer to this I would like to suggest to the prosecution to read two books which are bound to disprove the basis of such a statement. The books in question are two English books; the English, the greatest seafaring nation quite naturally considered his nautical problems of paramount importance. Shipwreck - survivors, a medical study by Malcolm Id Critchley, London In.A. Churchill Ltd. 1943. He maintains that the seafaring tradition is built upon the sacrifices and sufferings of generations of sailors, explorers and daring merchantmen. This compels the medical profession to put its knowledge at the disposal of the navy. He continues to describe the sensation of thirst and the efforts to conquer the lack of water and finally is forced to admit that no solution has yet been found for this problem. The second book is James Fenimore's "Queen". He narrates the odyssey of 5 shipwrecked men. Written in the middle of the last war, this book is an epic of comradeship and humanity and at the same time a dramatic description of the sufferings of helpless drifting survivors of a shipwreck. As part of my defense documents I submitted two scientific papers by Parker, Doc. No. 18, and Ladell, Doc. No. 21, dealing with seawater experiments and, further, Doc. No. 19, depicting a drama on the high seas, underlining the necessity of such research. They differ from other experiments carried out by the defendants by the fact that the physician had them constantly under his control and could stop them at any time. A glass of water ended the experiment. Halsey [sic] says on this subject that for quenching thirst salt solutions are superior to pure water, since the time it remains in the body is greater and the balancing effect on the

intermediary disturbances is more pronounced. (The Water Balance of the Healthy and Sick Person. Springer Publishing House). The injections at the end of individual experiments were, therefore, not tortures, but were medically well founded. The seawater experiments are furthermore basically different in that, in contrast, for example, to the bacteriological experiments, no diseases are caused in a healthy person with untested drugs or, as in the case of sterilization, the healthy person is rendered permanently sterile.

Therefore, I can, certainly turn to the question whether the execution of these justified experiments can be considered a war crime or a crime against humanity. In view of the consolidation of evidence which I have submitted to the court, I can present its result here in the form of a few remarks.

Its execution lay in the hands of men, well suited for this task by reason of previous experience and specialization in the field. The most famous German internist Springer, calls him his most able assistant. The director of the experiment had a number of well trained aids at his disposal and all necessary therapeutical implements were at hand. This experiment could not have been carried out differently in the best American Hospital. The actual beginning of the experiment was preceded by intensive animal experiments and an experiment on himself by the director. The treatment, housing and nourishment of the experimental persons were good. They volunteered and were informed about aim and consequences of the experiment by the director. If someone were to emphasize again at this point that volunteers exist in allied prisons but not in German concentration camps, then I do not want to argue about that. As defence counsel it suffices for me to point out that Seligsohn subjectively and definitely and not carelessly assumed that he was dealing with volunteers. A judge of a criminal court does not judge the action, he judges the man and therefore he can not simply pass up the so-called inner facts of the case. Nor was there any definite proof submitted that allied nationals

were used in the experiments. The experimental persons were not selected to persecute them for racial or political reasons, they were the black chevron of the anti-social prisoner. A study of the American immigration and marital laws have taught us that especially in America, the concept of the "Anti-social element" is well understood. — No death cases and no permanent impairment of health resulted from the sea-water experiment. They were certainly hard and troublsome and constituted an heroic act on the part of the experimental persons, but they were not tortured and cruelties, they did not violate human dignity and thus, they are not crimes against humanity. This is seen unequivocally from the statements of Dr. Laska, Moxson, Pillsbury and Mettlich and from the sworn testimony of the defendant as witness in his own behalf. These testimony disprove completely the prosecution witnesses Vieweg, Vorlicek, Bauer and Tschonitz. It is now the task of the court to weigh these testimonies against each other and to examine

their credibility. Apart from the many previous convictions of the old jail-bird Vioweg, we must not forget in the case of the other prosecution witnesses, what the star witness of the prosecution in concentration camp questions, Kogon, has written about feeling of revenge. The most important circumstance, however, is the fact that all these prosecution witness moved only at the fringe of the action itself, that they were not absolute eye-witnesses, but depended on rumors and legends as described to us vividly by the Czech physician Dr. Horn as a phenomenon of mass psychology. In the case of the sea-water experiments I was able to find the original data sheets, and thus make an expert investigation possible. This investigation has now been carried out by the internationally recognized authority, the expert Prof. Dr. Voelhard, and has confirmed the statements of the defendant are unequivocally. Even the prosecution's expert, Prof. Ivy, had to concede many decisive points to the defense.

This concludes my statements about the experiments. In conclusion I want to point out once more that the defendant had no personal interest whatever in the experiments and that he carried them out against his will as a military order which he had to obey.

Your great president, Franklin D. Roosevelt said on the 23rd of Feb. 1942: "The Atlantic Charter does not only apply to those parts of the world which touch upon the Atlantic ocean but to the whole world; the aims are disarming the aggressor, self determination for nations and peoples, and the four freedoms: Freedom of Speech, Freedom of Religion, Freedom from want and Freedom from fear." Your soldiers have carried the Stars and Stripes across the ocean to put these words of Roosevelt into action. If someone says to you now: "I have lived in fear and under compulsion." Would it not be tragic if you especially, as liberators from fear, would execute here what Himmler or Hitler have not done? If I quoted the devil's servant nephistophiles in the case of Dr. Rascher, then you shall quote Faust in Beiglboeck's case and say:

"Whoever strives to make an effort him we can save"

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For objective and subjective reasons, therefore, you will have
to acquit my clients.

THE PRESIDENT: The Tribunal will now be in recess for a few
moments.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: It is the intention of the Tribunal to hear the personal statements on the part of the defendants on Saturday. The arguments will be concluded by the end of tomorrow afternoon. Those personal statements on the part of the defendants will be made by each defendant from the dock. Each defendant will step to the door of the dock before which will be placed the microphone. These personal statements on the part of each defendant are, of course, not intended to be arguments. The defendants have testified at length from the stand, their counsel have argued the matter, we have heard the counsel on oral argument and the counsel will file a brief, the length of which depends upon the sound discretion of each counsel. It appears to the Tribunal that under these circumstances that a personal statement by each defendant not to exceed ten minutes for each one might be sufficient. I would be glad to hear from counsel as to whether or not they think that this will be sufficient and if not sufficient, why not.

MR. SAUTER: Mr. President, I believe that in the name of all the defendants and the defense that the time limit of about ten minutes per defendant is sufficient. If a defendant would like to have eleven or twelve minutes, I am sure some defendants will take some minutes less. I believe that we can be in agreement with the proposal of the Tribunal.

THE PRESIDENT: My eye-sight possibly would not be very good in watching the exact ten minutes each defendant will speak, if they do not exceed that limit more than a minute or so. It will be understood then that each defendant will make his personal plea from the box beginning Saturday morning. Very well, counsel, that is understood.

I understand from the interpreter that the translations of the arguments on behalf of the defendant Ruff have not yet been received.

THE INTERPRETER: Yes, Your Honor, it just arrived.

THE PRESIDENT: The Tribunal will now hear the arguments on behalf of counsel for the defendant Ruff - the translation has been received.

MR. SAUTER: For the defendant Ruff:

Your Honors, I have a detailed piece of writing which I have submitted on 1 July. I have submitted the evidence in the case of Dr. Ruff and judged them objectively, and then in a supplement of 1 July 1947, submitted on the 8 July 1947, I have also explained my position to the testimony of Dr. Ivy in detail and I have determined that the conception of Dr. Ivy in all important points agrees with the views and practices of Dr. Ruff, and, that, therefore, Dr. Ruff, is also from the point of view of Dr. Ivy not guilty in that view either. The brief for the length of time does not enable me to present those statements of Dr. Ivy which are also important for this trial but I would like the Tribunal to take note of my written presentation in the case of Dr. Ivy in the trial brief of the prosecution. I could not answer to the trial brief of the Prosecution because I have not yet received it. If I can get this before the verdict I would like to answer to it.

Now, Your Honors, I turn to the plea which I have written as an introduction, from which I shall quote the following:

The defendant Dr. Ruff is charged only with the high altitude experiments which were carried out by his collaborator Dr. Rosenberg in cooperation with Dr. Rascher in the Dachau concentration camp. He was never accused on any other count by any one; the completely negative results of the trial make it so self-evident that the conspiracy as alleged by the prosecution does not include Dr. Ruff, so that we need not waste a word about it.

This fact in itself already constitutes a certain exceptional position for the defendant Dr. Ruff in this trial, because most of the other participants must defend themselves against a series of different charges; on Ruff, however, only on this one.

Then from pages 1 to 12, the first chapter of my written statement, I have represented Dr. Ruff as a man and scientist, as he is described by all of his collaborators, and as a scientist all of them emphasize

his personal courage in these self-experiments, his responsibility and his consideration for experimental subjects and his scientific achievements. These recommendations have to more value because as far as the evidence goes the Prosecution was not able to produce a single witness who testified against Dr. Ruff unfavorably as a man or a scientist.

I now continue with the second chapter of my plea in which I have examined the experiments. These presentations are to be found on page 5 and the following pages, under the Roman numeral II. I have said the following there:

The proceedings of this many months old trial have clearly shown that Dr. Ruff is innocent and that those experts were right who from the outset and in spite of all suspicions were convinced of the innocence of Dr. Ruff, and who openly testified to Dr. Ruff's innocence.

Certainly Dr. Ruff agreed to and approved it that high-altitude tests with a low-pressure chamber of the Reich Air Ministry were performed by his co-operator of many years, Dr. Romborg, together with Stabsarzt Dr. Rascher, in a concentration camp, using concentration camp inmates as experimental subjects. He agreed to it after the performance of urgent experiments in the Dachau concentration camp had already been, on principal, agreed upon and approved by Professor Dr. Hippke and Prof. Dr. Wolts.

Therefore, the question arises whether these high-altitude experiments were already illegal for the reason that THEY WERE PERFORMED ON CONCENTRATION CAMP INMATES.

This question must be denied; for only such inmates were used for the experiments who had VOLUNTEERED for that, or who at least were regarded by Ruff as volunteers and could be regarded as such in view of the whole situation, and no one could reproach him for having erred in this respect because other persons had perhaps deceived him about these facts.

2) There are, however, some witnesses who apparently maintain that

the prisoners used in the Ruff-Henberg experiments were not volunteers. Above all the witnesses Vieweg and Neff are of this opinion.

a) During his direct examination of 13 December 1946 (German examination records page 464 and following ones) the witness Vieweg mentioned a series of experiments of different kinds which were performed at the Dachau concentration camp. Referring in particular to the high-altitude experiments there, which alone can be considered in the indictment against Dr. Ruff, he states firstly (pages 475-476) that high-altitude experiment with the low-pressure chamber were performed on 10 patients; "For these experiments frequently also patients and male nurses, also, were used who during the experiments were seen in the corridor of the adjacent hospital ward.", with which Vieweg apparently wanted to point out that these "patients" and "also the nurses" were as volunteers; the ten "OFFICIAL EXPERIMENTAL SUBJECTS" had been well fed and supplied with smokes. (page 476/485) but in addition these ten so-called "anhibition-patients", a large number of people had been selected from the camp who were "always being sent to the high-altitude experiment institute". In that way a block leader (Blockaelter) who probably suffered from pneumonia a few hours later was in the sick bay mortuary"; the same happened in the Malaria department of the witness Vieweg; "one day a patient who had had some differences with Zill, the leader of the camp for protective custody, was sent to the experimental institute; he (Vieweg) found him in the mortuary the next day. He (Vieweg) knows by hearsay" that a great number of patients who took part in these experiments had died and ended up in the sick bay mortuary" (page 476).

Between the lines of this rather obscure and vague statement one may read that, according to Vieweg's statement those further experimental subjects took and especially those who had died during the experiments DID NOT belong to the ten "official experimental subjects" and had not been volunteers. However, in the direct examination by

the Prosecution the witness Vieweg did not express himself explicitly about this alleged compulsion of the so-called experimental subjects.

During the cross-examination by the defense counsel of Dr. Rosenberg the witness Vieweg (page 485) explained his expression the "ten exhibition patients". The ten selected patients who were used for the high altitude tests had been accommodated in a special room and had been well nourished (page 485); they had been exhibited, and they had been presented to Himmler during one of his visits. Himmler made them big promises, if they survived, they would be dismissed these 10 patients had been drawn into the experiments; ... they had told him (Vieweg)

that they were very exhausted by the whole affair. BUT AS FAR AS HE COULD REMEMBER THEY ALL SURVIVED" (page 486/489) on questioning the witness Vieweg repeatedly stated (page 486/487/489) "that as far as he could remember Dr. Rascher had carried out the experiments himself; the only thing Vieweg could state (page 487) about a participation of "Luftwaffe officers" in these high altitude experiments, was that some Luftwaffe officers "had also been there". But he could not say anything about the actual participation of the Luftwaffe officers. From the description on page 501 "these 2 gentlemen of the Luftwaffe" certainly were not identical with Ruff and Rosenberg. He himself (Vieweg) had only talked with these 10 official experimental subjects, the so-called "exhibition patients". But notwithstanding any of the other experimental subjects. He himself had never observed that these other prisoners were used for high altitude tests, but he had been told about it frequently. Vieweg repeatedly stated that the 10 official experimental subjects had still been alive at the end of the experiments (page 489) that NO DEATHS had occurred among them.

So much for the statement of the witness Vieweg; of course it is unreliable because it does not establish a clear distinction between these high altitude experiments authorized by Ruff and carried out with the cooperation of Dr. Rosenberg, and other experiments in the low pressure chamber which Rascher undertook by order of Himmler, without the authorization or previous knowledge of Dr. Ruff and without the cooperation of Dr. Rosenberg. This distinction, which is of decisive importance in judging this case, only appears in Vieweg's statement insofar as the ten official experimental subjects (the so-called "exhibition patients") were exclusively used for the first experiments (*Ruff-Rosenberg-Rascher), whereas other prisoners were used for the other experiments (Rascher alone). Of course, the significance of this distinction was not clear to Vieweg at that time and could not be observed by him, because Vieweg did not know anything at all about Dr. Ruff's activity and since he did not know anything of all

about the agreements which had been reached between Dr. Ruff and Dr. Roscher.

Apart from these obscurities one has to regard THE STATEMENT OF THE WITNESS VIEWEG WITH THE GREATEST CAUTION for another reason: For Vieweg is the witness who, with unusual unscrupulousness, committed plain perjury in the sessions of 13 and 16 December 1946. He tried first (page 474 fg.) to give the impression that he had been sent to the concentration camp without any reason, that he had been committed for "political protective security." This representation of the witness Vieweg is completely in accordance with his previous behavior, because formerly he had generally pretended to be politically persecuted an innocent man who had been thrown into a concentration camp without ever having learned the reason. Under this false pretense he offered himself as witness for this Trial, and because of this misrepresentation he was presented as a witness by the prosecution whom he had deceived. However, in the cross examination Vieweg had to admit that in 1934 he was sentenced to 4 respectively 6 years PENAL SERVITUDE FOR FORGERY OF DOCUMENTS AND FRAUD, that is to say for COMMON crimes, which, as a rule, have got nothing to do with politics. On repeated questioning the witness Vieweg stated again and again (page 483 fg.) that he could NOT REMEMBER having received any other previous conviction in addition to these 4 respectively 6 years penal servitude. He insisted on this statement, even though he had been repeatedly reminded that he was under oath; his stereotype phrase was, he could not remember, he even emphasized: "That he deposed this under oath" (page 484) and he continued to insist on his statement even though he was told that his previous convictions could be determined without difficulty since his files had been sent for (page 484).

Now, to compare the testimony given under oath with the list of convictions of the witness Vieweg, which was submitted as Document Ruff No. 24, in Document Book Ruff, Supplement V, page 93.

Besides the 4 respectively 6 years of penal servitude which he admitted, the witness Vieweg received in reality NOT LESS THAN 6 PRISON TERMS prior to 1934, among them 5 years penal servitude and 5 years loss of civil rights for repeated severe thefts.

This extract of the penal register shows WHY the witness Vieweg had such a "bad memory": He never was politically persecuted, as he pretended to be, but he is the type of incorrigible professional criminal who could not be changed or educated even by the most severe penalty. If ANYBODY deserved to be sent to the concentration camp it was this Vieweg. But even the 5 years he spent in the concentration camp did not help him any. For now he is again in prison, in Bamberg, where charges were brought against him on 5 March 1947 at the District Court of Bamberg for forgery of documents and fraud, as well as for 5 cases of repeated theft, for attempted abortion, for active bribery and for Black Market dealings.

This incorrigible professional criminal allowed himself to be presented here as star witness for the prosecution against an honorable, blameless citizen, as which Dr. Ruff emerged in the course of this Trial. Can the court base its verdict on the statements of a person like Vieweg, who on top of everything shamelessly lied to the Tribunal and committed the worst possible perjury.

b) The other witness presented by the Prosecution for the Dachau experiments is Walter Neff; he is at present in the Dachau camp for war criminals and will soon have to stand trial himself before the American Tribunal, for experiments in which he took an active part.

I skip the next few pages of the plea where I state that this other witness of the Prosecution, the witness Neff, according to his own testimony was a multiple murderer, that he is fully conscious of his murders, without any kind of conscience he boasted of them and believes he will escape by implicating other defendants, for instance Dr. Ruff. But I want to draw your attention to the testimony

which I regard important that a Jewish tailor - it is to be found on page 12 which I presented in my plea. I read on page 12:

Special attention must be attached to the witness Neff's further assertion regarding a Jewish tailor who worked in the sick bay. Neff called Dr. Rosenberg's attention to the fact that this man was not sentenced to death, and Rosenberg thereupon immediately went to Rascher with Neff in order "to set matters straight". Upon intervention by Dr. Rosenberg, Rascher then actually sent the tailor back; when the accompanying SS man again threatened the Jew, Rascher again intervened and "immediately had the man (the tailor) brought to safety in the bunker" (p. 655). Again, in the case of a second inmate, a Czech, who unjustly and without his consent had been brought in for the experiments, Dr. Rosenberg according to Neff's report intervened on behalf of the prisoner, with the result that Dr. Rascher entered a complaint against the criminal SS man with the Camp Commander Plesowsky. Thereupon the SS man was immediately transferred to Lublin; in that way the Czech was SAVED FROM CERTAIN DEATH BY DR. ROSENBERG (page 655, 719).

This testimony of the witness Neff plays an important part in answering the question whether or not the experimental subjects used were volunteers, and also, what Dr. Rosenberg, and therefore Dr. Ruff, knew about them, and what Dr. Rosenberg's attitude was toward this question. In this connection, Neff said: "Rosenberg, Ruff's deputy, therefore, did not want any dangerous experiments; he tolerated no murder and considered only experiments with volunteers".

That is literally what the witness said.

My further statements on page 12 and 13 of the plea then point to the decisive fact that Neff evidently could not distinguish on the one hand between those experiments which were conducted with the approval of Ruff and were carried out without any deaths at all, and between the experiments which he conducted himself and which Rascher

undertook on the authority of Himmler and in which deaths occurred.

I also want to read what I have written on page 13.

However, Neff's testimony does show that the selection of the experimental subjects was carried out in two different ways: For the "dangerous experiments" Rascher ordered the subjects through the local headquarters, and they were brought by the SS; they were therefore people condemned to death (page 663); for the "serial experiments" on the other hand, and "for most of the Other experiments which took place that's what the witness said, the people were brought to the experimental station from the blocks , that is, from the camp", (page 657) by the block leaders, etc. (page 663). These "serial experiments" were obviously the experiments approved by Ruff and Neff expressly establishes that "volunteers reported for these experiments" (pages 657/712) ! He even gives the reasons why the prisoners volunteered for these: because Rascher, and Himmler too, had promised various inmates "that, if they participated in the experiments, they would be given a better labor assignment" (page 657) and even as Himmler promised that they would be discharged (page 712). Such volunteers reported to Rascher on their own initiative (according to the witness) as he went through the camp, without any special efforts having been necessary to find volunteers (witness Neff, page 657).

There can be no doubt that these volunteers, estimated by Neff to be about 10, are identical with the 10 "official experimental subjects" or "exhibition patients" mentioned already by the witness Vieweg, and it is noteworthy that Dr. Ruff, too, in his testimony always told of 10 or 12, or at the most 15 persons from the very beginning, of course (he did not count them himself) who were regularly called in for the high altitude experiments and who he saw himself, when, a single time, he was present for observation and checking at the experiments in Dachau; this number Dr. Ruff had mentioned at a time when Neff's and Vieweg's testimony was not avail-

able . He therefore could not have anticipated that these witnesses
would confirm his figures as correct.

I have further stated on pages 15 and 16, where I first mention the numerous contradictions in the testimony of Neff, on page 15, under #3, I continue:

There can be no doubt that, if these statements by Neff were true, it would have been easy for the Office of the Public Prosecutor to produce numerous other witnesses, who, likewise, had been inmates of the concentration camp at Dachau, who had perhaps experienced these experiments themselves, or who had spoken to subjects of these experiments or had even observed the experiments. However, not a single outsider, not a single incontestable witness, has been produced although half a year has elapsed since the days when, here in the courtroom, one could not fail to realize to what an unreliable and untrustworthy class persons of the caliber of Vieweg and Neff belong. This fact very strongly indicates that obviously no other witnesses are available or could be made available who could confirm that the experimental subjects who were used in the Ruff-Rosberg altitude tests were not volunteers. Let the fact be mentioned here, for the sake of comparison, that in the case of the Gebhardt sulfonamide operations, for example, one-half dozen incriminating witnesses were brought from Poland and Russia and were interrogated here as witnesses. Why was not a single trustworthy witness produced from among the Dachau experimental subjects and placed in the witness box? Because no one could be found who could confirm the untrue allegations of a Vieweg and a Neff. On the other hand, during the trial a whole series of persons, who deserve a great deal more belief than Vieweg and Neff, affirmed with certainty that all the experimental subjects in the Ruff-Rosberg experiments were volunteers and that from the very beginning an indispensable condition which was demanded and assured was that the subjects were voluntary.

Then, in this connection, Your Honors, on page 16 to 18 I have collected the testimony by a series of witnesses who have testified here regarding the subject of voluntary experimental subjects, Dr. Lutz, Hielecher, Hippke, and General Wolff, and I have then, on page 18, given

the result of all these testimonies by witnesses and have collected it.

If one takes all these statements by witnesses together, which certify that the experimental subjects in the Dachau high altitude experiments of Dr. Ruff and Romberg were volunteers, it cannot be doubted that the concordant statements by Dr. Ruff, Dr. Romberg, and Dr. Woltz are absolutely true; these are defendants, it is true, but from all sides testimony is given of their irreproachable professional conception. Although they are now sitting in the dock, their precise and clear statements deserve far more belief than the changing and contradictory statements of a habitual criminal, who has committed a downright perjury in this court, or of a murderer, who actually belongs far more in this dock.

I then come to page 19, to the results under #5:

There can be no doubt that the experimental subjects for the Dachau high altitude experiments were volunteers, at least as far as the experiments authorized by Ruff are concerned. Whether volunteers reported for the extra-experiments continued by Dr. Rascher, or whether the prisoners were forced into these experiments by Dr. Rascher, does not need to be examined, because Ruff and Romberg did not participate in these experiments in any way.

But even if any doubt as to their having volunteered were possible, it cannot be denied that Ruff and Romberg were firmly convinced that all their experimental subjects actually were volunteers; this was stipulated from the very beginning and in all discussions of Dr. Ruff with Hippke, Woltz, and the representative of the SS; therefore Ruff could always be convinced that only volunteers were actually concerned.

Dr. Ruff's conviction was strengthened through personal conversation with various prisoners on that day on which he himself went to Dachau to control the execution of the experiments and to ascertain that everything was carried out in a completely orderly manner.

And finally, in this connection, it cannot be overlooked that Dr. Ruff, as he has stated under oath, confirmed by numerous affidavits in

Document Book Ruff, never at any other time in his life worked with involuntary experimental subjects. Just because he considered it as an indispensable provision for the success of the experiments that the experimental subjects were voluntary, that they themselves cooperate, Dr. Ruff never thought that the Dachau prisoners were not fully and completely in agreement with the experiments, especially since Rosenberg told him, during his first visit in Berlin, that all conditions for the experimental subjects were fulfilled and that they were, therefore, German voluntary and criminal experimental subjects.

In Chapter 3 of my written plea I have then stated my attitude toward the problem of prisoners as voluntary experimental subjects and I have written about this on page 21 as follows:

The expert, Professor Dr. Leibbrandt, has held to his one-sided opinion also in this respect, and has advocated the theory that prisoners can never be regarded as volunteers. This opinion is doubtlessly false; in other times, the expert perhaps would not have supported it. For the administration of justice in other cases also accepts legally binding statements of prisoners and does not think of declaring them legally ineffective only for the reason that the prisoner in consequence of his imprisonment finds himself in an embarrassing situation and therefore not completely master of his own free will.

One surely is not mistaken in supposing that none of the defendants, even if he has even such great experience as a medical man, at that time thought of all the possibilities without exception which we have to consider now, where since many months we have to search for the legal basis of the whole problem of human experiments, and have to think of all eventualities. According to his sentiment, at that time, each physician and research man said to himself: If the experimental subject agrees to the experiment, everything is all right. For this always appeared to the physicians to be the highest principle: an experiment is legal if the experimental subject agrees to it, provided that the physician observes the necessary care when performing the experiment.

As proven here by this trial, there exists in no country a written law regulating the legal conditions of experiments on humans. On the other side, however, the human experiment is such a far-spread and often such an indispensable matter that one might speak of a conventional law, which generally and tacitly is accepted and acknowledged by the whole world. The defense of some of the defendants has demonstrated to the Tribunal in its document books the opinion of the whole world on this conventional law, in the most varying degrees, from the absolute harmless to the absolute deadly experiment, and has certainly therewith compiled valuable material which is suitable for forming the basis for a codification of this medical conventional law and to show safe future roads for the development of justice in this sphere. Lacking a written law, the physician and research man even today can only recognize the conventionally legal concept as a rule for his conduct as expressed in international medical literature. Experiments on which, time and time again, reports were made in this international literature without meeting any opposition do not constitute a crime in the medical conception. From nowhere a plaintiff arose from the side of the responsible professional organization or from that of the administration of justice to accuse the experiments described in the literature as being criminal. On the contrary, the authors of those reports regarding their human experiments gained general recognition and fame; they were awarded highest honors; they gained historical importance. And in spite of all this, is what they reported on supposed to have been a crime? No! In view of the complete lack of written legal norms, the physician who generally knows only little about the law has to rely on, and refer to, the admissibility of what generally is recognized as admissible all over the world.

The defense is convinced that the Tribunal, when referring to the decision of this problem without being prejudicial, will first gain the understanding from the large number and multiplicity of experiments performed all over the world on healthy and sick persons, on prisoners and free people, on criminals and on the poor, even on children and mentally

all persons, how the medical profession in its international totality answers the question for the admissibility of human experiments not only theoretically but also by practical examples.

It is psychologically understandable that German research men today will have nothing to do, if possible, with human experiments and try to get away from them, or that they would like to describe them as inadmissible even if before 1933 they perhaps were of the opposite opinion. However, experiments performed 1905-1912 by a highly respected American in Asia for the fight against the plague, which made him famous all over the world, cannot and ought not to be labeled as criminal because a Bloch is supposed to have performed the same experiments during the Hitler period (in fact, however, were not performed at all), and experiments for which, before 1933, a foreign research worker, the Englishman Ross, was awarded the Nobel prize for his malaria experiments, do not deserve to be condemned only because a German physician performed similar experiments during the Hitler regime. One should not say that experiments, because of different diseases or different drugs from those referred to in this trial, because of this difference had nothing to do with the counts of the indictment of the present trial, and that therefore they are of no importance as evidence. In the foreground there stands the basic question for the conditions under which such experiments are permissible; whether they refer to plague or typhus, to tuberculosis or jaundice is a secondary question which concerns more the medical expert than the jurist.

Decisive for this trial is the question: Did the conditions under which experiments were performed by the defendants find their international recognition even for such experiments which were performed by foreign research workers with the approval of all civilized humanity?

If one wants to arrive at a just and satisfactory decision, one must disregard the fact that here German research workers are accused. On the contrary, one has to strive toward obtaining an international basis to represent the present international opinion on human experiments

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and which for decades, if not for centuries, will form the base for
the permissibility of

human experiments. We, as jurists, can only render a service to the development of medical science and therewith to humanity if we endeavor to establish a doubtlessly clear view of today's international opinion on human experiments, if these experiments were performed by Germans or by foreigners.

When reading this international literature, however, there cannot be any doubt that the volunteering of the experimental subjects warrants in every case the legality of human experiments, and that, therefore, the mere sentimental attitude of our research workers was right, when because of their knowledge of international literature they made the question of the legality of human experiments depend in the first place on the voluntariness of the experimental subjects.

2) As far as one can see, the international medical literature up to date nowhere represented the opinion that the consent of a prisoner was ineffective because for reason of his imprisonment, he had no free will. On the contrary: In many cases it has taken an important step forward, and has frequently, without meeting any opposition, reported on experiments performed on prisoners, THE CONSENT OF WHICH WAS NOT REGARDED AS ESSENTIAL. Many experiments which partly were reported here in the verbal procedure, partly described by the document submitted by the Defense, demonstrate clearly that obviously everywhere the opinion prevailed that regarding prisoners, in particular such who were SENTENCED TO DEATH, THE CONSENT OF THE PRISONER WAS REPLACED BY THE PERMISSION OF THE AUTHORITIES TO PERFORM IMPORTANT HUMAN EXPERIMENTS; and even such experiments which were very dangerous and with which fatalities occurred in a more or less large number; because also the published reports talk about the number of deaths in the described experiments, partly slightly camouflaged but to a large extent publicly, without the research worker or the reader realizing that FURDEROUS ACTIONS were being reported, because otherwise the reaction would have been a completely different one.

3) The question becomes particularly acute if these experiments were carried out in a TOTALITARIAN STATE or during a total war. It is not the point in this connection whether a dictatorial regime is desirable or should be rejected, neither whether a war as such appears to be criminal (for example because it will be judged as an aggressive war later on); the attitude that under such exceptional conditions, as they are the case in a dictatorship or total war, even life-endangering experiments on human beings may perhaps be more justified than under normal conditions is obviously based on the thought that the state governed by dictatorship may and will ask for greater sacrifices, also from criminals especially during total war.

As a matter of fact the thought appears to have occurred to many a defendant during this trial: If during a total war the state asks everybody to be ready at any time to serve at the front, and if during the aerial war every woman and every child at home is exposed daily and every hour to mortal danger, may a citizen would think it unsatisfactory if especially a criminal, who is burdened with heavy guilt or may even have committed a crime punishable with death, remains free of all danger, in other words would be in a better position than the upright citizen.

It appears now that many an experimental subject who was used at that time for experiments was of the same opinion, because the witness Karl Wolff stated on oath that the prisoners with whom he spoke in Dachau said, that "they would contribute voluntarily to Germany's war effort and show a sign of their actual good will". (see document book Ruff, document No. 21, page 85). The same ideas were also stated by various defendants during their interrogation.

4) The attitude toward this problem is extraordinarily difficult, as exceptional circumstances have to be considered which were never thought of earlier; for example, with the question which positions have to be taken in the framework of this problem, particularly by POLITICAL

prisoners, or with the difference, whether a death sentence has been passed by an Ordinary Court or by a political Special Court, has earlier apparently not concerned itself with the medical-legal literature for the authorization of human experiments.

With regard to the case Ruff, these difficult questions need perhaps not be examined any further, because it has been established without doubt as was stated from a different side that Ruff was convinced that the experimental persons had volunteered and could be convinced according to the position of the case.

5) In this connection one has repeatedly asked, whether Ruff had convinced himself in Dachau, whether the experimental persons used there were actually condemned PROFESSIONAL CRIMINALS, whether he had examined the PERSONAL records of these prisoners for this purpose, further whether he had made sure if the special privileges promised to the prisoners (as for example their amnesty) were actually given to them later on etc. However such exaggerated demands could not be made of the attitude of professional duty of that time to Dr. Ruff, if one does not want to be unfair to him. Dr. Ruff had never been in a concentration camp otherwise; his short single visit on that day in March 1942, when he was in charge of the high altitude experiments, was the only contact which he had in all his life with the concentration camps; the quiet and reserved scientist had never heard anything in his institute about the cruelties as they took place in the concentration camps, and as we learned of them in this court room. Therefore the thought never occurred to him that he was deceived in Dachau; as a matter of fact he never doubted that the things he was told by the competent authorities were the absolute truth and therefore there was no cause for him to check what he had heard as to its accuracy. And then one ought not to disregard the position of Dr. Ruff in his only visit to the Dachau concentration camp in March 1942. He had to be glad that he was allowed inside the camp as a civilian; inside the camp he was not

allowed to move one step of the prescribed way, the guard who accompanied him saw to it that Ruff did not see any more than he was supposed to be shown, and that he could never speak a word with anybody in the camp except with the few experimental subjects. It would be strange were one to believe that Dr. Ruff could at that time actually could have asked to have a look into the personal files of the prisoners or to ascertain himself about the pardon which was supposed to be given later on. The conduct of the prisoners themselves and the discussions he had with them were actually such that any suspicion in the direction indicated could and actually did not occur to Dr. Ruff.

Therefore in the case of Dr. Ruff one has to remember that experiments on VOLUNTEERS are generally permissible and that the voluntariness is also present and has to have in mind if a PRISONER submits to the experiment. This is obviously also the interpretation of the verdict of the American Military Tribunal II against Field Marshal MILCH of 16 April 1947: MILCH knew from the very beginning that experiments were carried out on prisoners in Dachau; in spite of that the Tribunal acquitted him on that count. This would not have been possible if the Tribunal had denied on principle the idea of a prisoner volunteering; because in that case Milch would have had to be sentenced already because he allowed experiments to be carried out on prisoners, but besides that in the verdict against Milch of 16 April 1947 it makes no difference whether a prisoner who allows himself to be used as an experimental subject is a political prisoner or a criminal prisoner or whether the sentence on the prisoner was passed by an Ordinary Court or a political Special Court. It would be incomprehensible now if the Tribunal were to take a different attitude to those questions in the case of Dr. Ruff. than Tribunal No. 2 took in the case of Milch.

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Your Honors, in chapter four of my written plea, I have on pages 28 to 46 proven that the high altitude experiments of Ruff and Romberg in Dachau at that time were absolutely necessary for Germany at war. Further that these experiments were not extended on principle beyond the solution of the problems which were presented and considered necessary.

I have further proven that Ruff after the completion of his own experiments, after he received notice of Rascher's experiments, went away from Dachau to Berlin immediately afterwards in order to bring back the chamber.

Finally, that the experiments were prepared scientifically well and were conducted correctly.

In the last chapter of my written plea on pages 48 to 62, I have stated that the experiments of Ruff and Romberg were absolutely not dangerous to life, that they were carried out without any incidents, that in these experiments of Ruff and Romberg there were no pains and damage to health to the experimental subjects and that none had any fears.

All of these statements I cannot develop in detail because of the length of time involved, but I assume that the defense counsel for the other defendants will continue to discuss this matter when their turn comes.

On page 62 of my written plea, I then come to the following conclusions:

Dr. RUFF only did what his superiors ordered him to do. If these thus have failed may they be taken to account.

Dr. RUFF had no doubts concerning the orders of his superiors for his assignment was urgently necessitated in the interest of his country, engaged in the most difficult war, and of its aviation; if Dr. RUFF at the time had read

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the entire international literature about medical experiments on human beings he would have been able to learn that experiments much more exerting and much more dangerous than those with which he was familiar, which he knew and planned, were being conducted all over, and also with prisoners, and perhaps are still being conducted without the competent authorities or medical societies declaring them unpermissible and intervening against them.

In long years, Dr. RUFF has proven to be a particularly conscientious and considerate research man who devoted his entire past activity primarily to save endangered human lives. Neither can he be blamed for having collaborated for a short time with Dr. RASCHER. He (RASCHER) has been assigned to him as associate by his highest superiors; he had to rely upon that; if they ordered him to work together with a man who, LATER on, turned out to be a criminal, no liability can be charged to Dr. RUFF. When Dr. RUFF saw through this colleague, forced upon him, and realized his criminal activities, he immediately cut off all relations to him on his own initiative avoided any further collaboration with him and thus probably prevented much toward further disaster.-----

Your Honors, when at the end of the trial I consider Dr. Ruff in this way in all these long and hard months when I came to know him, my distinct impression is that this kind scientist with his high type of knowledge and his many years of experience in this special field, that this honest man which we have become acquainted with during these months and in whom we can find no fault, this unselfish and responsible researcher, who only thought of his work and thought of others who were in the most danger of their lives, made it his task to save lives. This man does not belong in prison, he should

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rather continue his research work in the interests of all people and for the salvation of threatened human lives. I confess quite frankly, Your Honors, to have the deepest impressions that I take with me from this trial and among these impressions is that Dr. Ruff at the end of his scientific assignment of Dr. Ivy, this American scientist and researcher when he asked him to continue certain experiments in the states and to undertake some research in their common special field and to clarify a certain problem, a problem which has as its one purpose to save threatened human lives. Dr. Ruff has not forgotten his task in life and has a consequence has remained faithful to his work. He does not think of liberty and a future for himself, but merely of his great interest in aviators, whom he loves to help no matter what nationality. You, as judges, have the opportunity to let Dr. Ruff continue his job. Fieldmarshal Milch was acquitted as far as the Dachau altitude tests are concerned, Medical Inspector Dr. Hippke was not indicted at all. Under these circumstances, justice demands that Dr. Ruff be acquitted.

THE PRESIDENT: The Tribunal will now be in recess for a few moments and when we reconvene will hear arguments on behalf of the defendant Rosenberg.

(A recess was taken.)

THE MARSHAL: Persons in the courtroom will please find their seats.

The Tribunal is again in session.

THE PRESIDENT: We will hear from counsel for the defendant Rosenberg.

DR. VOENNER: Mr. President, members of the Tribunal:

When the prosecution demands, in the German transcript page 54 (English 12), that the Court give its verdict in the name of humanity, it thereby demands a verdict in the name of the community of the world, of a pipe dream rather than an idea even close to realization.

When the prosecution, on page 57 of the German transcript (English 14), considers the completion of this trial as necessary for all people, this trial should, in their opinion, contribute to the obligation of the peoples of the world to recognize the standards used at this trial, an obligation, that is, which has so far not been recognized generally as legally binding and does not even actually exist.

The prosecution is of the opinion that the true purpose of this trial goes beyond the mere exacting of vengeance on the few. It also holds my client, the defendant Dr. Rosenberg, responsible for murders, tortures, and other atrocities which he is said to have committed under the guise of medical science.

If this trial is to derive the punishment of doctors from the moral concepts of the civilized world, it must definitely be stated that moral values themselves never constitute a basis for demanding punishment. Max Scheler, in his works "Formalism in Ethics" and "The Ethics of Material Values", has convincingly proven the correctness of this opinion.

Natural law does not even demand the punishment of a person who makes no use of his natural right to resist laws which violate the moral values of justice, loyalty, reliability, and others.

The punishment of such action is merely a measure of expediency, for otherwise the principle "nulla poena sine lege" would logically be incompatible with natural law itself. This principle demands that the legislator not create a new law and thus make retroactively punishable

an immoral action which, at the time of the action, violates no legal standards. Let me in this connection quote a word of the wise Koenigsberger philosopher Kant: "Nothing but good will is conceivable in this world, or even outside of it, which can be considered good without any reservation. Good will is not only what it effects or achieves. It is not its usefulness in achieving some predetermined purpose, but it is the willingness which is good in itself."

The prosecution charges Rosenberg with violation, from 1939 to 1945, of the Control Council Law No. 10, which was not promulgated until 20 December 1945. The Control Council Law No. 10 lists criminal acts against international law, determines the responsibility of single individuals, and establishes the competence of this military tribunal.

The question whether the Tribunal is competent as an American military tribunal to pass judgment on offenses committed before the occupation of Germany shall not be considered idle. The fact is that the Tribunal has constituted itself and must make a decision in accordance with Ordinance No. 7, Control Council Law No. 10, the London Agreement of 8 August 1945, and the Executive Order of the President of the United States through which the judges were appointed. We must, however, sharply distinguish the procedural question and the question on which material criminal law is to be applied in arriving at a decision. The proclamation of Ordinance No. 7 shows in itself that even American procedure is not considered applicable without a legislative act of the occupying power.

My written plea or closing brief, which I have submitted and which can be read here only in parts and in its basic arguments because of lack of time, is then followed by a short discussion of Control Council Law No. 10, and especially an answer to the charge of conspiracy. In this connection I refer to the argument presented by the defense in the plenary session of Military Tribunals I, II, III, IV, and V on 9 July 1947.

Also in view of the fact that a decision of this Tribunal has been

rendered on 14 July 1947, I do not have to deal with this any further.

In addition, I have considered the preparation, execution, and result of the Ruff-Bomborg experiments, to which I want to refer here. But I would also like to make a brief statement about the position of the prosecution expert Professor Ivy in regard to slow-sinking experiments.

The question now arises whether the danger of the slow-sinking experiments emphasized by Professor Ivy really was so great that these slow-sinking experiments, in view of the evident unreliability of the calculations and animal experiments, are to be considered medically not responsible. Where does Professor Ivy see the special danger in these slow-sinking experiments? Professor Ivy considers it possible that in these experiments anoxia lasting for almost ten minutes could cause damage to the brain cells. He also considers it possible that the damage to the brain cells caused by the slow-sinking experiments were not detected because no intelligence tests were given in which a decrease in the learning capacity could have been noted (page 9145 of the German, page 9035 of the English, and pages 9186-9187 of the German, page 9050 of the English minutes).

The following questions are to be clarified in regard to this testimony:

1. Is there any damage to brain cells when anoxia lasts less than ten minutes?
 2. When such damage appears under longer anoxia, is it then localized in the cortex cerebri?
 3. When the damage is not localized in the cortex cerebri, but in other parts of the brain, how does such damage manifest itself and by what methods can it be detected?
 4. Is it possible to conduct an examination of the learning capacity by an intelligence test?
- and
5. How great is the degree of probability for such an injury?

Is it so great as to define the execution of similar experiments as being irresponsible?

These questions were answered by Professor Ivy as follows:

To Question No. 1: Professor Ivy answered the question as to whether he knew a case of demonstrable brain injury incurred through temporary anoxia, "No" (page 9308 of the German and 9201 of the English transcript), and then he continues on page 9309 of the German and 9201 of the English transcript: "Two factors have to be taken into consideration here: First the degree of anoxia and then the time. These two factors must be taken into consideration, and as you say in your own report you were dealing with the extreme limits that, in your opinion, were still on the harmless side of the danger line."

To Question No. 2: Dr. Ivy, when asked where, after long lasting anoxia, the brain injuries occurred, affirmed that in most of the cases such injuries appeared in the main ganglia and especially in the area of the corpus striatum, that is, not in the pericranium (page 9309 of the German and 9202 of the English transcript).

To Question No. 3: Dr. Ivy answers and affirms the corresponding question that injuries of this kind generally are connected with disturbances known as parkinsonianism. Disturbances of this kind may also appear later, after 5-10 days, and then even lead to death. In any event, however, these disturbances cannot be ascertained through intelligence tests (page 9310 of the German, page 9202 of the English record).

To Question No. 4: With regard to this point Dr. Ivy stated that he had knowledge of papers on the registration of injuries of brain cells through anoxia by way of testing the learning capacity in animal experiments (page 9307 of the German, page 9200 of the English record). According to the statements of Professor Ivy no experiences in connection with the reduction of the learning capacity of human beings, nor the registration by means of intelligence tests, are available.

To Question No. 5: To Judge Sebring's question (page 9217 of the German, page 9111 of the English transcript), "Is in the Ruff-Bomberg

report mention made of experiments of which it can be said with absolute certainty that they resulted in deaths, permanent injury, or great pains for the experimental subjects?" the expert Professor Ivy answered, "No, but you will recall that I said that there was a possibility that the learning capacity of the experimental subject might suffer from the long anoxia of the brain. However, that was not the purpose of the Ruff-Bomberg-Rascher experiments."

To the President's question, "Mr. Ivy, is it or is it not your opinion that the experiment of a slow descent from an altitude of 47,500 feet, as executed by the defendants Ruff and Bomberg, would probably cause injuries for the experimental subjects?" Professor Ivy gave the following answer: "I said already that possibly the learning capacity might suffer from it, but there is no reason to assume that injuries can be caused." (Page 9437 of the German and page 9325 of the English transcript)

This is such a low degree of improbability, also confirmed by this severe expert of the prosecution, that no reproach can be made to a scientist if he conducts such experiments, especially when the experimental subjects were warned with regard to the possible risk connected with the experiment.

The discussion of the final reports on the Ruff-Bomberg-Rascher experiments, Document No. 402, Exhibit 66, Document Book II of the prosecution, and the questions whether the Ruff-Bomberg experiments were painful or dangerous for the lives of the experimental subjects cannot be dealt with in detail now. In this connection I want to refer to my written closing brief.

With regard to the question of voluntary participation of the experimental subjects in the Ruff-Bomberg experiments, I refer to the same brief and to the speech of my colleague Dr. Sauter.

I go on with the question, whether criminals can be used as voluntary subjects. The voluntariness of concentration camp inmates was denied by General Taylor who pointed out the terrible living conditions in the concentration camps. In this connection I want to point out that in 1942 the German people and with them Dr. Bomberg did not yet know anything about the terrors in the concentration camps, which later became known to the public. Furthermore the terrible conditions as they prevailed later, especially towards the end of the war were only developing in 1942. The experimental subjects used in the Ruff-Bomberg experiments were further German criminals (this point was shown). In other words, these experimental subjects were not prisoners in the sense of the Nazi regime, but persons who in any government would have been detained in prisons. The fact, that professional criminals and criminals were transferred to concentration camps is just the point that renders the evidence so difficult. I want to emphasize once more that the fact that the experimental subjects of the Ruff-Bomberg experiments were criminal prisoners, who in any event would have been incarcerated and were no victims of the national socialist regime must be taken into consideration.

Besides the fact that the living conditions in a concentration camp in 1942 can not be compared with those prevailing towards the end of the war and as they are known to everybody today, the hardships resulting from these conditions or from any other conditions might be an argument for the voluntariness as well as against it.

If the witness Hiescher was also speaking of the voluntariness under duress and said that the concentration camp inmates seized every opportunity eagerly in order to improve their conditions and if he described this attitude as an objective compulsion, this

expression defines more properly the concept of the philosophical freedom of choice that practically never exists in real life. Even the expert of the Prosecution, Prof. Leibbrand in his partial attitude upheld this point and declared that prisoners could not be considered as volunteers.

There is no doubt that this point of view is obviously wrong, which is proved by the fact that prisoners are considered to be in a position to make commitments that are legally binding. I do not know of any case, in which the legal science failed to recognize such a commitment, because the prisoner in view of his arrest was under duress and therefore was not free to make a decision.

It is up to the state to declare the voluntariness of a prisoner who volunteers for an experiment as sufficient, if the state intends to use prisoners and criminals for experiments. The physician has nothing to do with this question. It is beyond his sphere of influence. He only knows that the rulings recognize that kind of voluntariness and give him the authorization to use these persons as experimental subjects. The physician has the right to be of the opinion that the sentenced criminal has the absolute freedom of choice between both possibilities, either to serve his sentence or to volunteer for an experiment. The prisoner has the same freedom of decision as the patient, who can choose between a dangerous operation, sickness and death. This is particularly the case, if we are concerned with a first experiment on a completely new technique of operation. Never was such a decision considered as being under duress or morally objectionable. The physician is used to this free decision in a situation determined by fate. From his point of view it makes no difference whether he gives a choice to a person who has fallen ill by an accident or by predisposition or to the person who has become a criminal by accident or by predisposition. For a doctor and a scientist voluntariness must be sufficient. The supreme principle in this field could be for the scientists: An experiment is unobjectionable, if the experimental sub-

jects gives his consent, provided that the doctor, when conducting the experiment takes all the necessary precautions.

The problem is made more difficult by the fact that no legislation about experiments on human beings exists and still, experimentation with human beings is an indispensable prerequisite for the further development of medicine, which will be treated in the chapter on the Necessity of Experimentation on Human Beings. Everywhere in this field, certain rules have taken shape which can be considered as the law of common usage and which are quite generally and through silent acknowledgement accepted and recognized in the entire world.

In the course of these proceedings, valuable material has been collected by the defense which demonstrates the law of common usage in cases from the absolutely harmless to the fatal experiment. Without a doubt, this evidence would be suitable to codification of medical law of common usage in regard to experimentation with human beings and to direct legal development in this regard into safe channels. We do not want to examine here whether this would be possible within the framework of an international body such as the Red Cross. Perhaps, in this way, a problem of the future could be solved, a problem whose immensity and tragic nature is clearly seen in the question put to each one of the defendants by the expert of the prosecution, Prof. Dr. Alexander:

"Do you think it permissible to kill 5 people, if, by so doing, you can save the lives of 5,000 people?"

I refer to Dr. Sauter's statements and wish to skip the next 2 pages of the excerpts. And I continue on page 10.

For the supplying of prisoners as experimental subjects, without doubt the state has to assume the responsibility. As far as this matter is concerned the oath of Hippocrates can certainly not be applied to the physician. There were states which at least at times did not prohibit abortion. In almost all countries the interruption of the

pregnancies is permitted if the health of the mother is at stake, an exception which Hippocrates did not know. The physician's duty to preserve secrecy, one of the most noble fundamental principles of the medical profession, must be broken by the state if a public interest demands it, e.g., in the fight against contagious diseases, in the system of public insurance, or in the discovery and solution of a crime.

Here belong also the obligation on the part of the person carrying social security to undergo an operation, the sterilization laws, and many others. Apparently the legislator feels no qualms in such cases, because his laws bring the doctor into conflict.

For the doctor war must be the greatest madness of all. While he is fighting with all means of his art to save the life of a sick person, the lives of thousands in the flower of health are destroyed or forever injured. So far as he is able, a doctor must patch up again those who are injured, not so that they can now live in peace, but so that they can return to the front. The doctor does this, though it must run counter to the very meaning of his profession. He ignores the necessity, because the State has ordered him. I must bring this forth to show that the State, from various points of view, influences medical ethics. It is evident, that, if the State orders the doctor to do something that is contrary to his ethics, the State must undertake the responsibility for this. If therefore, the State makes experimental subjects available for medical experiments, it bears the responsibility for this fact, which, however, does not relieve the doctor from the duty of carrying out the experiments to the best of his medical ability and with the greatest of care.

Only to this extent is the scientist personally responsible.

There follow now proofs that the experimental subjects used in the Ruff-Romberg experiments were exclusively German criminals.

Now I should like to turn to the question whether the Ruff-

Somberg experiments in rescue from high altitudes were necessary.

It would appear necessary briefly to scrutinize the problem of human experiments as such.

The development of medical science would have been inconceivable in the history of mankind without the medical experiments. If one reflects that our entire medical knowledge and practice represents the sum total of the experiences that have been collected by natural scientists, healers, and doctors in the course of millenia in an unbroken series of human experiments, from the most harmless to the almost certainly fatal, only then can one calculate the great implications of the problem that confronts this high Tribunal, particularly as regards the effects of its judgment on the future.

The highly developed and difficult technique of modern operations has been acquired by the empiric method, the human experiment. The same is true of our knowledge of the means of combatting the great afflictions of mankind or our knowledge of the maximum doses of a medicine that is also a poison. Human experiments were as necessary for the testing of the remedies provided by the chemical industry, such as salvarsan and penicillin, as they were for the testing of modern physical methods, shortwave, x-ray, and radium therapy.

No one is able even to approximate the number of human experiments or the number of sacrifices that paved the way for medical science to its present pre-eminence. The great afflictions, formerly the scourge of humanity, which annihilated whole populations, have been conquered: the black death, the plague, leprosy have been all but exterminated. Other great diseases still take their numerous victims. The struggle against cancer, tuberculosis, malaria, and many other diseases is still going on.

In this struggle the method of human experimentation for which deductive thinking provides no sufficiently secure basis, has in modern times come even more prominently to the fore. And indeed, there is no other way. Animal experiments, calculations, deductions by analogy

can only help and supplement. The crucial experiment must be conducted on man! The euphemism "therapy" can not conceal the fact, that these are in reality experiments. Witnesses like Professor Leibbrand simply ignored these obvious facts. If every doctor had adhered so strictly to dogma, to the oath of Hippocrates, as Professor Leibbrand asserts he has, then medical science would still be in its Stone Age.

A doctor who stubbornly maintains this point of view and repudiates on ethical grounds any experiment on human beings does not thus solve this problem; he simply puts it on another man's shoulders. Such a doctor is a sort of conscientious objector in medicine, who does as little to solve the problem of human experimentation as the conscientious objector does to banish war from the world. Others, again, have purely personal motives. They do not feel themselves to be robust enough, or for other reasons wish to have nothing to do with such experiments - a clever and convenient way out, which, however, does not do justice to the scientist's obligation to the common weal.

Fortunately for mankind, however, there have been doctors at all times who have seen not only their duty toward the individual but also their duty toward humanity. Have all physicians who have carried out such experiments violated the oath of Hippocrates? Are all the great

and famous scientists — Pasteur, Ehrlich, Read, Grossi, Strong, Calmette — criminals; are they at least doctors who have violated the Oath of Hippocrates, this Oath that the prosecution has placed in the foreground as the moral law guiding this proceedings and that public opinion has consistently used for the moral defamation of all the defendants here?

It remained for Professor Ivy, the prosecution's star witness, shortly before the conclusion of this trial, in evaluating human experiments throughout the world and in according recognition to their ethical value to testify here on the stand that, to be sure, the Oath of Hippocrates had its validity, but was to be applied in its narrowest meaning only to the doctor at the sick bed. Moreover, Hall, in his book on medical ethics that Professor Leibbrand so often quoted, writes the same thing.

Since it is not possible to collect all the necessary data in experiments at the sick bed, in the course of history doctors have carried out experiments in which the pathological condition to be investigated is artificially induced; in part, to ascertain the degree of contagiousness during quarantine; in part, to investigate the pathological conditions in question without the interference of incidental symptoms; in part, to test the development and prophylactic effects of vaccines; and, finally, also in order to investigate pathological conditions in man that under normal circumstances should not appear or cannot be investigated; and here belong, for example, the states of hunger and thirst, the state of being very cold, the effects of great altitudes or great velocities, particularly the effects of acceleration and deceleration, and many other abnormal conditions that are brought about by changes in the normal conditions of life.

Such experiments were, in part, carried out on patients who, without their knowledge or on the assurance that a new method of therapy was being applied, were infected with additional diseases, or on whom new therapeutic methods were tested. Those suffering from cancer

have been particularly burdened with this, as can be seen from the history of cancer research. In addition, there were and are doctors who did not turn to the sick bed for their experiments, but who carried out their experiments on volunteer prisoners, soldiers, and free civilians, who were told what was at issue and who then either, for reward or idealism, made themselves available for experiments. Such a doctor was not bound by the Oath of Hippocrates, which prescribes for the patient, the victim, *primum nil nocere*; he was doing his duty as doctor and scientist, who is not fighting the battle against disease in the individual patient, but is called upon and obliged to take up the battle against disease as such, and thus is serving humanity as a whole.

It cannot be disputed that these experiments caused sacrifices, sacrifices of people who gave their lives for the peace and welfare of humanity, sacrifices that were endured in order to make the "thousand natural shocks that flesh is heir to", as Hamlet puts it, more tolerable.

I believe that I am not exceeding the limit which is at stake here if I ask the question: Were not all the real or ostensible advances of mankind, of which our age is so proud, bought at the expense of a vast number of sacrifices? I draw your attention to the history of the great discoveries, of soaring and flying; I draw your attention further to the accomplishments of techniques, the invention of the automobile and Railroad construction, mining, electricity, etc. The history of each such development is a list of victims, and everyone knows that.

So much of the necessity of human experiments per se, which must be basically recognized, a development is not to be broken off suddenly, or the methods of modern science are not suddenly to change from the ground up.

"Whether certain rules are to be observed in the execution of human experiments, and if so which rules, will be discussed later. At this point I am interested in the fundamental assertion that experiments on human beings must be permitted because the struggle against human nature

forces us to adopt this attitude. If, in the future, all experimentation on human beings is prohibited, not the doctor, not medical ethics, but only humanity would have to suffer.

Military Tribunal II in its judgment of 16 April 1947 against Erhard Milch took the same attitude by finding the Defendant Milch not guilty on this count of his indictment, although Milch knew that experiments on human beings, the same experiments with which my client is charged, were carried out for the Luftwaffe. Of course, not every experiment on a human being is necessary. But the question of whether such an experiment is necessary can be answered only in the individual case.

In the following, then, the necessity of experiments for "rescue from high altitudes" is proved in detail. I refer to the written plea or closing brief which I have handed in. In conclusion I should like to say the following on this chapter:

According to the evidence presented, the result must be stated to be that the Dachau experiments of Dr. Ruff and Dr. Rosenberg were absolutely necessary experiments.

The necessity of the Ruff/Rosenberg experiments was not denied by the Prosecution expert Prof. Ivy, who admitted that the same or similar experiments were and are being carried out in the American air force.

The latter fact can be seen from the fact that the Defendant Dr. Ruff, until his arrest, worked for the American air force on the same questions on which he had worked for the DWL. It also results from the fact that almost all leading German aviation medicine experts are at present working in the USA, with the exception of Drs. Ruff, Rosenberg and Becker-Freytag, who are under indictment here. Since the USA is at the present time not at war, and since it cannot be assumed that that country is arming itself for another war, we must assume that the necessity of such experiments is not a temporary one, but is absolute; that is, applied to the Ruff/Rosenberg experiments, that the execution of the experiments for "rescue from high altitudes" was not only necessary because

of the fact that Germany was at war, but the solution of this problem was of extreme importance for the further development of aviation in general.

Prof. Ivy, propounded three general principles for experimentation on human beings. These principles, as he testifies on the following page, he submitted, as a representative of the delegates' committee of the American Medical Association to this committee in December 1946, whereupon the committee took the following stand in this matter: I quote:

"The committee finds that the experiments which are described in Dr. Ivy's report correspond to the principles of medical ethics of the American Medical Association. These principles consist of three fundamental demands:

- 1) There must be voluntary consent of the experimental subjects on whom the experiments are to be carried out.
- 2) The degree of danger inherent in each experiment must first be established by animal experimentation.
- 3) The experiment must be carried out under responsible medical supervision in an orderly manner.

I should like to state that, after a study of the above evidence and from a knowledge of medical literature, it is obvious that experiments have been carried out which do not conform to these principles.

But even in applying these rules, which were propounded in 1946, it is certain that the Ruff-Benberg experiments, as described above, are quite within the framework of these three rules and have in no way violated medical ethics.

Conclusion: In the closing brief the Rascher experiments are discussed, which have been contrasted to the Ruff/Benberg experiments. It has been proved that Benberg did not take any active part in these experiments and that he personally opposed the Rascher experiments.

Not only is it completely out of the question that Benberg took any active part in the Rascher experiments, but in this case he cannot

even be charged with an omission. Every omission must be based on an "expected action". This expected action must also, however, be a "necessary action". Every necessary action is, of course, simultaneously an expected action, but not every expected action is simultaneously a necessary action.

The punishability of an omission depends on two prerequisites whether it is to be punished depends on a duty to take action and on whether it can be proved that this action would have averted the forbidden consequence. The duty to take action can arise from a legal maxim; in particular, it must be a legal duty to avert a consequence, the proved purpose of which it is to justify criminal liability for the consequence. On the other hand, a mere moral duty does not justify any criminal liability.

A duty to act could further arise as the result of the assumption of a special duty, perhaps the assumption of duties on the basis of a legal transaction or a contract. This possibility too is quite out of the question in this case, and the Prosecution has never advanced any facts which might admit of such an assumption.

A further basis for a duty to act would be possible perhaps from the law of common usage in the sense of a duty based on previous action, but in the present case there is no question of this. Reeborg, as has been shown, did not participate in the Rescher experiments either in the beginning or in their further course. Nor did he have any right to dispose of the chamber. Nor did he have any right of supervision or duty of supervision over the chamber. His assignment read to carry out "experiments for rescue from high altitudes", which he did. Nor could the Defendant Ruff be considered obligated from this point of view, since the chamber did not belong to the DVL but to the Medical Inspectorate of the Luftwaffe. Dr. Ruff and Dr. Reeborg did not belong to the Luftwaffe, however, but Stabsarzt Dr. Rescher did. Thus, if either of the three had had any right of supervision over the chamber, then it was only Stabsarzt

Dr. Rascher, never the civilians Dr. Ruff and Dr. Rosenberg.

The second condition for the criminality of an offense of omission is that it can be proved that the action demanded would have averted the forbidden consequence. The Prosecution has not brought this proof, either.

It must, rather, be assumed that according to the situation prevailing at the time, any attempt by Rosenberg to use force would have ended with his death and thus the forbidden consequence would not have been averted.

But in both respects, both in view of a duty to act as well as whether it can be proved that this action would have averted the forbidden consequence, the essential prerequisite is the possibility of undertaking the necessary action and the possibility of having some effect on the undesired consequence. For especially here the principle must prevail: "ultra posse nemo obligatur." Where there is no possibility of averting the consequence, there can be no talk of criminal liability for the consequence. Therefore, conviction for an offense of omission demands that the judge be convinced that there was a possibility of acting.

But this conviction can never be attained after the presentation of evidence. It has been established that a spontaneous action of Rosenberg's would have meant only an attack on Dr. Rascher. That is certain above all because Rascher obviously ignored Rosenberg's warnings, because he obviously did not want to conform with Rosenberg in this point.

I wish to state once again that in view of the over-all situation it was not possible for Rosenberg to save the experimental subject and thus prevent the awful results. Rosenberg was a civilian, unarmed, and was in the concentration camp as a non-member of the SS. Rascher was an officer in the Luftwaffe and an SS man. He carried a gun and claimed to be justified in his actions on Himmler's orders. I beg to ask Your Honors how Rosenberg could, at that moment, have saved the life of the experimental subject.

Military Tribunal II, in its judgment of the Milch case, has recognized the principle of "ultra posse nemo obligatur" by saying that legally a man cannot be expected to act like a hero. Had Rosenberg at that moment assaulted Dr. Rascher, he would not have been a hero but a lunatic. If you cannot expect a man to be a hero, surely you must not expect him to do something out of desperation. There cannot be any doubt that Rosenberg, had he survived the assault, would not have left the concentration camp again. This may be seen from Rascher's whole attitude as well as from his personal relations to Himmler, of whose staff he was a member. As proved earlier, Rosenberg did act, and that to a considerable degree. He did not merely save the life of one or three inmates but that of probably a large number when he removed the low pressure chamber from the Dachau camp and kept it away from there. I would like to know whether those who now cast the first stone at Rosenberg would have acted equally courageously and sensibly at the time as Rosenberg has been proved to have done.

He has worked on the problem of rescue from high altitudes in a continuous series of experiments on himself in the low pressure and freezing chambers, and given his contributions to the further progress and security of aviation in a number of scientific publications and in unpublished reports on his research work. His scientific achievements and his personal work were recognized through his appointment as head of the department for high altitude research in the Institute (page 20 of original) for aviation medicine of the DVL, he being the youngest

among the roughly 40 heads of institutes and departments of the DVL, which employed about 2000 German people.

Dr. Ruff, formerly the chief of my client, speaks about the personal and scientific qualities of my clients, and I draw attention here to pages 5555/56 of the German and pages 5550/51 of the English record, as well as to page 5721 of the German and page 5627 of the English record.

Romberg was and is not a climber or an ambitious man. During the war he did not work for his graduation or aim at publishing as much as possible. He regarded it as his duty, his experiments and research work which served as the security of air crews. That he did not spare his own person becomes clear not only from the affidavits submitted to me, but is also emphasized by all affidavits submitted on behalf of Dr. Ruff where in some cases he is mentioned by name and in some others included as a matter of course among the assistants and their contributions.

Romberg's cooperation becomes particularly clear from the affidavit given by Dr. Voas, also from the affidavit by Engineer Heinz Lesser. I should also like to have reference in this connection to the affidavit by Dr. Otto Gauer; in praising Romberg's attitude Dr. Gauer says:

"At a date later than the Dachau experiments mentioned by the indictment, experiments were carried out in the laboratories of Ruff, Romberg, and Gross which were made in order to clarify the important question of the combined effect of cold and lack of oxygen. In these experiments the experimental subjects were subjected to the lack of oxygen at an altitude of twelve kilometers only after having been exposed until an hour before to a temperature of minus 45 degrees C scantily dressed. Here the severe cold pain and shivering set in and the experimental subject was unable to sit and to write."

And Gauer adds:

"Since Ruff had connections in Dachau through the altitude experiments, it would have been easy for him to obtain concentration camp

inmates for these particularly dangerous and extremely painful experiments."

The same must be true for Dr. Rosenberg. He even was requested by Himmler personally to carry out the cold experiments with Rascher. Rosenberg's refusal to do this, but rather to carry out these "particularly dangerous" and "extremely painful" experiments - as related by Gauer - as experiments on himself, this must be considered a new proof of the high ethical concept of his profession which was Rosenberg's.

Furthermore, Rosenberg offered himself as an experimental subject not only in the framework of his own field of activities but naturally in all other experiments of the DLV.

Thus, it is not without the element of the tragic that it should be Rosenberg, whose only aim it had been throughout all his research work to save human lives by responsible, even often dangerous employment of his own person, that he now should be charged here "to have participated in the National Socialist system of extermination, motivated by an evil spirit under the guise of science".

The affidavits submitted by me certainly demonstrate unequivocally that National Socialism was not the motivating factor for the actions of Rosenberg. In all, his severe criticism and rejection of the system at the time is emphasized. The fact that one affidavit was furnished by a Jewish family, who were friends of Rosenberg and his family during the war, characterizes his point of view perhaps most clearly.

Even the prosecution witness Wolfgang Iutz expresses himself in the same sense as to the political attitude of Dr. Rosenberg. By itself there would not exist any necessity to discuss so much the political position of my client if not the whole trial due to the wording of the indictment and by the publicity in radio and press had been tied up so heavily with politics.

It is absolutely obvious that the experiments carried out by Rosenberg in no way were the result of a National Socialist point of view. What drove him to undertake all his other work and these experiments

was, besides his chosen task of airplane research, the urge to do his duty in a grave war and to help the population of Germany in its defense against a harsh aerial war. It is true that this is perhaps a political motive, too, but not a National Socialist motive for that reason and not one which deserves such public defamation.

Romberg was given a chance to prove himself personally and in regard to his character, a chance which is granted to almost everyone during one's lifetime, when an unfortunate fate brought him in contact, for the purpose of working, with a man of Rascher's type for the first time. At the beginning of the experiments Romberg had to consider Rascher as an innocent physician and officer of the Luftwaffe because he (Rascher) was introduced to him (Romberg) by many older and more experienced men than he. Already soon thereafter, Romberg changed his opinion of Rascher and already in 1943 he described him to Professor Werner Knothe as a bad man and a pathological liar. That is Document 6 in the Document Book Romberg.

I believe that in the course of these proceedings it has been proved that Romberg did not fail in this test, one of the most severe ever faced by a human being.

Romberg is a quiet man and a reserved one, perhaps somewhat too much so; loud and boisterous talk does not agree with him, and thus he did at the time, without many words, what he considered his duty and what was right.

As soon as he realized that Rascher, on Himmler's orders, was doing things he could not agree to, he discontinued cooperation with him and never re-assumed it.

In Dachau, entirely on his own, supported only by his chief, Dr. Ruff, to whom he was tied closely in comradely collaboration, and covered from a far distance by Hippke, Romberg succeeded with the skill of a diplomat, not only to disassociate himself from Rascher - that might have been relatively easy by pretending illness.

But he did not stop there. He went on and got the low pressure

chamber out of Dachau against the expressed will of Rascher and Himmler. By doing so, he not only prevented further experiments but he also, by stopping the series of experiments, saved for science the most important results of the experiments and thus gave meaning to the employment of the subjects and himself. For there can be no doubt that if he had only stepped out Rascher would have continued his experimentation in grand style and for a long time, and on the other hand had had no useful report on "Rescue from High Altitudes".

As soon as the necessary completion of the research report was performed, Romberg refused further collaboration with Rascher and above all he cleverly avoided the participation in the cold experiments ordered by Himmler.

By doing so, he faced dangers which today are about to be forgotten and which people from more happy lands can hardly imagine. The former Field Marshal Milch was acquitted under the charge concerning the altitude experiments. Generalarzt Hippke was not even indicted. Should Romberg, last link in the chain, be sentenced for the mis-deeds of Rascher?

Justice demands the acquittal of Romberg.

THE PRESIDENT: The Tribunal will now be in recess until 9:30 o'clock tomorrow morning.

THE MARSHAL: The Tribunal will be in recess until 9:30 o'clock tomorrow morning.

(The Tribunal adjourned until 0930 hours, 18 July 1947.)

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NATIONAL ARCHIVES MICROFILM PUBLICATIONS

OFFICIAL RECORD

UNITED STATES MILITARY TRIBUNALS NURNBERG

**CASE No. 1 TRIBUNAL I
U.S. vs KARL BRANDT et al
VOLUME 30**

**TRANSCRIPTS
(English)**

18 July - 20 August 1947 pp. 11199-11538

Official Transcript of the American
Military Tribunal in the matter of the
United States of America against Karl
Brandt, et al, defendants, sitting at
Nurnberg, Germany on 16 July 1947, 0930
Justice Basls presiding.

THE MARSHALL: Persons in the court room will please
find their seats.

The Honorable, the Judges of Military Tribunal 1.

Military Tribunal 1 is now in session. God save the
United States of America and this honorable Tribunal. There
will be order in the court.

THE PRESIDENT: Mr. Marshal, will you ascertain if the
defendants are all present in court.

THE MARSHAL: May it please your Honor, all defendants
are present in the court.

THE PRESIDENT: The Secretary-General will note for
the record the presence of all the defendants in court.

The Tribunal will now hear from counsel for the
defendant Woltz.

DR. SEIGREID WILLE: (Counsel for the defendant
Dr. August Woltz): Mr. President, Your Honors, my
written expose re the case against August Woltz will
assume a changed form by appropriate cuts, without, I
hope, becoming unconnected. My aim is to present to the
Tribunal those parts of my speech which, according to my
understanding, seem to be the most important and I wish to
do so without haste nor hurry.

I want to achieve to read my statements without hurry
to the Tribunal. My written text I shall keep and use as
my documentary materials. Until today I have not received
the closing brief of the prosecution and I should like to say
here I shall reply to it at a later stage.

Paragraph 1 of my document:

The handling of the Weltz case on the part of the
prosecutor.

It is part of the peculiarities of this trial - unequalled in kind and scope by any other in legal history - that the means of attack and defense and thereby the possibility of finding justice are distributed unequally. This does not imply a reproach against the court or the prosecution. This is the result of the preceding historical development. After the collapse of the German front the official German archives were placed in safety by the armed power for the purpose of prosecution. The comprehensive documentary material with which, almost exclusively, this trial is conducted, fell thus to the prosecution.

The inequality between prosecution and defense resulting therefrom was obvious to everyone who was able to follow the course of the trials. It became apparent particularly in the defense of the defendant Professor WELTZ, where it was necessary to establish definite dates, conversations and actions, which happened about 5-6 years ago and of the subsequent importance of which the participants were not aware at that time.

I, as defense counsel of Professor WELTZ was therefore not in the position to present to the prosecutor not even a single document belonging to the property of the defendant - on the contrary I was forced to contribute to the invalidation of the incriminating factors by taking recourse to the documents of the prosecutor himself and by affidavits collected with great effort.

Not only was it impossible for me to search in the archives for exonerating material. It was just as impossible to produce exonerating documents the existence of which was well-known to me. I give the following examples:

The letter of HIMMLER of 24 July 1941, mentioned in document No. 263, exhibit No. 47, page 59 of the German and page 58 of the English document book.

The letter of the same of autumn 1941, which RASCHER, in the Munich Discussion, presented to WELTZ, RUFF and BOMBERG.

For the first mentioned lot or it is probable, for the second one certain that it contains a remark of HIMMLER concerning the voluntariness of the experimental subjects, which would have been most valuable.

As is known the whole private correspondence of RASCHER was also confiscated. The prosecutor would certainly have submitted documents from this correspondence, if it had contained incriminating material. In view of the decidedly bad relations between RASCHER and WELTZ, which was the natural consequence of RASCHER's removal from the Institute, it is difficult to imagine that this correspondence should not contain numerous documents exonerating for WELTZ. However, it was not possible for me to get access to this material for the trial.

I am making these introductory remarks before passing on to the defense because I am convinced that the court on duly weighing the matter will consider accordingly the pros and cons of this unequal distribution of strength.

Weltz has been charged with taking part in the altitude and cooling experiments. In my document, I deal with the state of the legal rights and I come to conditions and to doubt about the Control Council Law. It is sufficient to point out that a direct responsibility of the single defendant is not here concerned. This is on page 3.

I also will do without discussing the term "Crimes against Humanity" and without detailed enquiries into the logical character of the high altitude experiments Ruff-Woltz, which beyond doubt was permissible and unobjectionable, just as Rascher's experiment on his own person was criminal. This excludes an active participation of Woltz from the charges of the indictment, so that there remains nothing but the charge of abetting. This is a term which I chose myself for certain vague terms of the Control Council Law.

This rather sweeping statement leads me to Number V of my Trial Brief which deals with the first development of the relationship between Woltz and Rascher in order to prove that it was not Woltz himself who approached this favorite of Himmler's. Here also, I can be rather short because it is beyond doubt that it was not Woltz who delivered the lecture on the apes and that he was not the man of the confidential conversation to whom Rascher made the proposal to experiment on professional criminals.

Number VI, equally, this is the conversation in the Freysing Palace, is no longer a decisive subject. I think, it needs no more proof that Woltz was not a man of Rascher's character, and was not in favor of criminal experiments and just this fact was to be proved by the conversation with Hupke.

I shall come to further explanations which are of important character from pages in my document book, which deal with the relationship of Woltz and Rascher. This describes the personal relationship, the relationship which the prosecution deal with, the relations between Rascher and Woltz.

The reason for Rascher's assignment to Woltz's office
Rascher's independent experiments were not abetted by Woltz.

I first want to point out that Woltz did not personally order Rascher's assignment to his institute. This was proved by the affidavits of Wendt and Kottenhoff. Woltz had no interest whatsoever, neither in Rascher's person nor in his experiments. For this I shall give the following reasons:

The subjects suggested by Rascher for the experiments were refused by Woltz. The subject "Slow ascent to high altitudes" first suggested by Rascher had been dealt with scientifically by Woltz already at an earlier period. He then had discovered in animal experiments the so-called "adaptation effect". Therefore further experiments were not of particular importance in view of the phase of the war at that time and the developed technique of the fighter planes. That was the reason, why Woltz objected to this suggestion.

But he also objected to Rascher's second suggestion of conducting freezing experiments. Prof. Woltz certainly was the first who recognized the cold problem with regard to the Luftwaffe. However, he objected to human experiments about the cold problem in this case. He did not consider them as being important, being in a position of getting the necessary result through animal experiments.

As he did not know Rascher personally, he had no reason to call him to his institute.

Therefore the assumption that Woltz himself had ordered Rascher's assignment to his institute cannot be substantiated. To this extent therefore one cannot speak of his abetting Rascher.

The fact, how Woltz treated Rascher and his suggestions still more contradicts the assumption that he wanted to push forward Hitler's protégé. The facts prove the contrary.

Here I am referring to an incident that happened later. However in consideration of the connection with the abetting problem, I first want to deal with Rascher's removal from Woltz' institute.

Because of Woltz' refusal of Rascher's suggestions for experiments, Rascher had nothing to do in his institute. He therefore continued with his former activity in Schongau, where he had been stationed before. Since he was seen in Munich, without reporting to Woltz, Prof. Woltz ordered him to report twice weekly at his institute, he further categorically demanded that Rascher reported him on the situation at Dachau. It is known, how Rascher resisted to this order. When reporting for the third and last time in Woltz' institute, Rascher showed Woltz the Himmler telegram ordering secrecy even towards Woltz. This was sufficient for Woltz to apply for his immediate dismissal.

How can the Prosecution in view of this situation speak of Woltz abetting Rascher and his intentions? What advantage would it have been for Woltz? At that time he was one of the best reputed X-ray specialists, whose successes were merely and solely due to his personal achievements. Why should he in contradiction to his have had the character intention to make any profit from the scientific results of one of his assistants, who had but little experience? Frau Nini Rascher however, in Doc. No. 263 and No. 264 of the Reichsfuehrung-SS tried to misrepresent the facts this way, and the prosecution obviously accepted her statements. The incorrectness of this is obvious.

Then I come to paragraph 8 of my plea, Lutz as a prosecution witness I shall not deal with here now. Lutz

was a prosecution witness of importance.

No. 9 of my document, I would like to substitute for the following explanations, which I have already submitted to the translators.

Considering the evidence which clarified the facts I am content with stating the following facts in my speech about the origin and the agreement in Adlershof:

1. Woltz' meeting in Adlershof was neither planned nor prepared.
2. The experimental series was not criminal.
3. Before the beginning of his first collaboration Dr. Rascher's person gave no cause for suspicion, neither personally nor from the medical-ethical point of view.
4. The experiments were approved by the highest authority of the Luftwaffe. Hippike had given his express consent.

Therefore, the conversation in Adlershof is a serious agreement between two physicians of the Luftwaffe about scientific collaboration. The gist was that the two institutes were to be regarded as sponsors. Ruff was to be represented by Rosenberg who, as far as he was concerned, was to have the immediate direction in Dachau. Since he was a collaborator of long standing one could give him this task with a good conscience.

I now come to Paragraph XI:

Penal-judicial conclusions from the Adlershof agreement. Considering this agreement from the point of criminal responsibility of its participants, we arrive at the following result: Professor Woltz and Dr. Ruff are the originators of this agreement. They were the first to draft it and to agree on it by mutually talking and thinking it over. Then they called in those persons who were mainly to be entrusted with the carrying out of the

experiments and with those, viz. Rosenberg and Rascher, they discussed the details and checked over them. Then they informed the persons in authority in Munich and Dachau, which was Schnitzler and Piorkowski, about the details of the experiments and made sure that the experiments could be conducted under the agreed conditions. This was all that was to be expected since Piorkowski had received the clear order of Himmler to obey these conditions, through Schnitzler.

Therefore no reason can be found anywhere to assume that the two of them had intended to conduct impermissible criminal experiments. This was already set forth before. Just as little it could be their intentions to let Rosenberg and Rascher make impermissible or criminal experiments. For this reason they familiarized Rascher during the Munich conference with the program of the experiments.

Equally we have to deny the question whether or not Woltz can be held responsible for the criminal experiments conducted by Rascher outside the experimental program "Heigl" on his own initiative or by order of Himmler. Of the facts stated in Article II, Number 2, of Control Council Law No. 10 only the following can be applied: c) took a consenting part therein), d) (connected with plans or enterprises involving its commission). Only intentional, but not negligent activities are mentioned here; this becomes clear from the whole exceptional position which the Control Council Law occupies in the legal life of the occupied territory. The latter fact excludes any other forms of participation, either of persons of foreign Criminal Law, as a specialist. A criminal responsibility of Woltz and Ruff is out of the question, because their participation and their suggestions extended only to the permissible experiments and not to the experiments outside the series.

Apart from that the Prosecution seems to raise the question whether or not Ruff or Woltz could possibly prevent Rascher's experiments from being carried out at all, either before or after they started. Of which possibilities the Prosecution thinks is not stated clearly. The nature of the questions, however, and occasional marginal remarks in their statement give us a hint. Quite obviously the Prosecution thinks of an offence by omission, committed by the omission of possible defensive acts.

As regards Professor Woltz only the following questions can be discussed in this connection:

1. How could Professor Woltz have prevented the getting under way of these criminal experiments of Dr. Rascher's? The Prosecution seems to think of the possibility of preventing them in some form.
2. What could Professor Woltz have done after the beginning of the experiments in order to prevent their further spreading?

In this latter respect, I may make the remark that an intervention against the continuation and the spreading of the experiments on the part of Professor Woltz was outside the reach of possibility, alone because he had no knowledge of the beginning and the conduct of the experiments, presumably not, because Rascher had left his command.

The following paragraph is devoted to throw light on the question; here I am going to tell that Prof. Woltz did everything possible to obtain some knowledge of the experiments without, however, to succeed and took in some knowledge about the experimental subjects without succeeding.

Woltz fights for the supervision of Rascher's experiments.

It is Point 11. The Prosecution did not make it clear how Waltz could have prevented Rascher's own experiments. But from various remarks we can conclude again and again that the Prosecution always starts from the idea which we have today of Rascher, Himmler and the concentration camps. In contrast to this, the defense must point out that this knowledge was lacking at that time. Waltz didn't have it, just as little as the great majority of the Germans did not have it. By virtue of which reasons should Waltz have presumed that Rascher would turn a criminal at some later date? When the preliminary discussions about the Ruff-Romberg experiments were still on, Rascher had not committed a crime at all, as far as we know. Also, no other persons had conducted any criminal experiments in Dachau before that time. For obvious reasons Waltz regarded the close relations to the Reich Fuehrer SS, of which Rascher boasted, as exaggerated pranks of an ambitious assistant. Waltz could in no way expect or foresee that Himmler would give the order to Rascher to start a series of criminal experiments of his own. Waltz only knew that experiments were to be carried out in Dachau along the lines of the unobjectionable Adlershof program. These were to take place under the direction of Ruff and Romberg. Both were from the scientific point of view eminent experts, and from the point of view of character they had the best reputation. Now, under these circumstances, could Waltz have had an inkling that Rascher would secretly embark on a second, criminal series of experiments?

Since no period of time was set for the beginning of the experiments, Welts did not at first notice that Rascher was not in Munich. As soon as Welts learned, however, that Rascher had been seen in Munich, he called him in twice a week to report. Rascher eliminated Welts by presenting him a telegram from Himmler. This was a complete surprise to Welts, since Rascher had earlier forced himself upon him and laid great value on his collaboration. As is known, Welts immediately drew the official conclusions from this situation, he had Rascher's assignment to his institute ended and sent a report about this to the Medical Inspectorate. This action was in every respect correct and expedient. This created clear conditions. Rascher was then again under Air Gen Medical Department VII, which thus had the supervisory duty. If today, with knowledge of the further developments, one examines Welts's action, one can find no better way. Even the Prosecution was not able to tell Welts of a better way which he could have taken.

XII

When was Rascher's assignment to Prof. Welts ended?

Rascher doubtless left the institute at the beginning of March 1942, before the beginning of the experiments proper. The Prosecution has attempted, relying on Doc. NO 264 and NO 1359, to set the time he left at the beginning of May 1942 or even later, in order thus to ascribe to Welts the responsibility for Rascher's own experiments.

To that I can answer the following:

The following considerations show that Rascher's assignment to the Welts institute ended at the beginning of March 1942:

1. The experiments in Dachau were suspended from about 22 February till 10 March 1942 in order to exclude Welts. This can be seen from Document NO0263, Mrs. Nina Rascher's letter, and from Ruff's and Rosenberg's testimony. It is just about out of the question that the experiments were again resumed before Rascher and Schnitzler were certain that they had eliminated Welts' influence.

2. Himmler's telegram which Rascher showed to Welts is obviously

the answer to Schnitzler's question in Document NO-263. Rascher had also shown this telegram to Rosenberg at an earlier stage in the experiments and it is hardly conceivable that for two whole months Rascher made no use of this telegram. However, the telegram led immediately, after Rascher had submitted it to Welts, to the conclusion of Rascher's assignment at the Institute for Aviation Medicine.

3. It can be seen for certain from Document NO-318 that on 16 March 1942 Rascher was no longer at Welts' Institute. From 16 March until 16 April 1942 he had been transferred directly to Dachau from the Luftgau. The probative value of this document is not violated by the fact that Rascher called his office in Dachau by an incorrect title. From the official military point of view Rascher, at any rate, belonged after 16 March 1942 no longer to Welts' Institute but to the Luftgau Medical Department VII. For practical purposes it was of no consequence for the Luftgau Medical Department what name Rascher gave to his office when he was assigned to Dachau.

4. From Document NO-296 it can be seen that Hippke had told the Luftgau to extend Rascher's assignment at Dachau by one month. The fact that Hippke gave these instructions to the Luftgau and not to Welts himself also shows unmistakably that at that time, on 27 April 1942, there was no longer any official connection between Welts and Rascher. This letter at the same time also refutes the Prosecution's assumption that Welts had been assigned for the freezing experiments in Dachau because he was still Rascher's superior. Hippke's letter proves the contrary. He must have known that Rascher was no longer with Welts.

5. That Rascher's assignment to Dachau was a different assignment from his assignment to Welts' Institute can further be seen from the fact that Rascher's assignments to Dachau were always limited to one month whereas the original assignment to Welts' Institute was unlimited.

There is, therefore, complete documentary proof that Rascher, at least after 16 March 1942, no longer belonged to Welts' Institute. Only two file notes stand in opposition to this proof; namely, Document

NO-264 and NO-1359. Both file notes originate from the Rescher couple and were set down simultaneously at two different places. File notes as such do not possess the probative value of the above-mentioned official communications; and one must be really distrustful if such notes originate from the Rescher couple. Among the numerous letters from the Rescher couple which the Prosecution has put in evidence, there is hardly one which does not contain gross lies and distortions of the truth. In his numerous letters, reports and notes, Rescher was always pursuing specific ends, and was willing to use any means. He was particularly successful in camouflaging his real official connections, in order to play one office against another. I may simply mention here his negotiations with Grewitz and Gebhardt. One can therefore in this case also readily assume that Rescher was attempting to have his Dachsau assignment extended by asserting that Welts was still trying to eliminate him from Dachsau or to hamper him in his work.

I, therefore, maintain that the two file notes were intentionally untrue assertions by the Rescher couple, which were made for a very specific purpose. Rescher falsified the date of events which had in reality taken place two months previously.

During the cross examination the Prosecution also confronted Welts with a few alleged statements by a certain Miss Frick. These statements were alleged to prove that in April Rescher was still at Welts' Institute. However, since the Prosecution produced no proof of this, we need not go into the matter any further. Miss Frick was employed at the Welts Institute before 15 April 1942 and the date of 15 April 1942 which the Prosecution has stressed was only the date when she was finally put on the payroll.

Under these circumstances I need point out only briefly what legal form these matters would take if one assumed that the file notes were true. In this case also the fact would be that Welts was not informed of the Dachsau experiments, although he repeatedly begged for reports. Under no circumstances would Welts have known that Rescher, in addition to the Ruff-Rosberg experiments, was carrying on an independent

experimental series of his own on Himmler's orders. Therefore, if one were to assume hypothetically (although the contrary has been proved) that Rascher still belonged to Welts' Institute until the beginning of May 1942, Welts would still bear no responsibility for Rascher's criminal experiments since he knew nothing about them and also could not assume that aside from the Ruff-Rosberg program still another program was being carried out on Himmler's orders. These hypothetical reflections demonstrate that the actual time when Rascher separated from Welts' Institute is not of such practical importance as the Prosecution asserts.

From this it can be seen that Welts, who tried in vain to check on the experiments, bears no responsibility for Rascher's entire further experimental activities. One can only understand the situation and the part that Rascher played if one considers Rascher's double position as a doctor. This is No. 13.

XIII

Double position of Rascher as a doctor and an SS-Leader.

The fact that the Dacheu experiments took quite a different turn than Welts had planned and expected had its reason in Rascher's double position. Within the Luftwaffe, Rascher was Welts' subordinate. But it was in no way obvious for Welts what were the relationships between Rascher and Himmler. Prof. Welts did not at all expect Himmler to change his attitude and exclude him from the experiments, after having allowed them. Welts was of course not in a position to exercise any influence upon Himmler's decisions.

This relationship is approximately characterized in the judgment of Military Tribunal No. II in the case against the former secretary of the state MILCH. In this case the responsibility of the Luftwaffe for the high altitude and freezing experiments examined from the legal standpoint. The judgment concludes after careful examination of the evidence with the statement that Milch was not in a position to prevent Rascher's and the SS experiments, even if he had known anything of them. I quote

the decisive sentences from page 6 because of their importance for the use of Welts: I quote: "Did the defendant have the power or the possibility to prevent or to stop the experiments? It cannot be denied that he had the power to either prevent or stop them as far as they were carried out under the sponsorship of the Luftwaffe. It seems to be very probable however, they they would have been continued against his will by Himmler and the SS." That's the end of my quotation.

This conception results from a correct understanding of Himmler's position at that time. The secretary of state Milch was not in a position to defend his point against Himmler's will.

which had been committed there. The general request for a very severe punishment of these crimes, in order to prevent them from being repeated in the future, was more than justified. This is obviously the reason, why General Taylor, in his opening speech, claimed that this trial served as an example, in order to make the German people understand, why it was necessary to destroy cities like Nurnberg.

In answer to this, I want to point out the following: The principals guilty with regard to this special field that is being discussed here, are dead. Rascher, Ding-Schuler, Grawitz, Lolling, Conti escaped the justice of this world. Also Holzschner and Finke are dead. One would render a poor service to the concept of justice, when sentencing persons, who happened to be in touch with the periphery of these events, because of crimes committed by those who are dead, without examining their guilt quite independently of them.

With this I do not turn, Your Honors, against the infliction of severe punishments, but against the method asked for by the Prosecution, namely to make responsible those, who are still alive, for those who are dead.

A grave reproach was made against the Justice of the Third Reich, by saying that it lacked every consideration for the right of the individual and sacrificed these inalienable rights to a misinterpreted interest of the state. Opposed to this, the democratic principles demand an impartial examination of the guilt of each individual, not influenced by the political situation or the need of political propaganda.

Such an impartial judgment is also necessary in consideration of the unique importance given to the outcome of this trial by the world. The outcome of this trial will be decisive for the character of medical research for the next decades. But, since the medical research in its final aim does not concern the doctors but the sick, the importance of the judgment for the entire civilization cannot be evaluated highly enough. The legal limits of medical research with regard to human experiments will in future have to be conform with the principles set down by the expected judgment. If these limits are too restricted, it will

not be the doctors, in the last analysis, who will be prejudiced, but the sick for whose benefit science is meant to serve.

I now sum up the result of my examination as follows:

1) It has been established that Wetz did not participate in any criminal high-altitude experiments or further any such experiments in any form whatever.

2) He did not omit doing anything which could have prevented or stopped any criminal experiments of Rescher's.

3) He did not participate, either directly or indirectly, in Rescher's cold experiments.

4) He did not participate in any conspiracy.

The conviction which I express with this statement is the result of several years of work, which began with the first day of Prof. Wetz's arrest in June. I personally, after having known Wetz for many years, was convinced from the beginning that he could not have committed any inhumane acts. I therefore expected after beginning this trial to encounter clear and indubitable proofs. The contrary proved to be true. Today, after almost eight months of investigations, the participation of Wetz in medical experiments of a criminal nature has been clearly refuted and the charge of furthering them shrunk to an unfounded assumption. And this is the result of a trial in which the Prosecution were in possession of all the evidence.

But the Prosecutor also made the defense of Prof. Wetz more difficult by his special treatment of the case. Not only by an incomplete and one-sided presentation of documents, whereby exonerating documents were not brought out, but also in the rest of the manner of presenting the case. This could give the Tribunal a completely false picture of conditions in Germany and of the world of ideas of the defendant Wetz and thus of his true plans and intentions. Thus - to give examples - the picture of Rescher was painted during the trial by the Prosecutor in such a way as if, from the beginning, those around him had been able to realize that he was the criminal that he has proved to be today, after years of investigation.

It is similar with knowledge about conditions in the concentration camps. Only after the collapse did conditions there come to light, and at the same time, the terror system of concealment was revealed. The Prosecution, however, assumes that it was generally known at the time.

To this chapter of unscientific treatment belong statements of the Prosecutor's such as this: that Prof. Welts was responsible for Ruff's and Rosenberg's being in the dock. As if the Prosecutor did not know very well that these two aviation medicine experts had enough knowledge of the subject and enough common sense to form their own judgment on their decisions. Moreover, they had no intentions of doing anything illegal, any more than Welts did.

I have emphasized the inequalities in the procedural possibilities also, however, in order to ask the Tribunal to compensate for the severe disadvantages of the defendant in obtaining evidence by corresponding judicial judgment. In all penal procedures in the world, no doubt, the prosecutor has to bring evidence against the defendant, who is presumed innocent - has to show the court that the defendant deviated from the paths of lawfulness, and has to bring this proof all the more clearly, the less grounds for suspicion the defendant has given in his previous life. In doubtful cases, when the Prosecution case does not clarify the state of affairs sufficiently, the previous irreproachable conduct of the defendant, his previous way of life must be the decisive factor.

I have already stated by way of summary that the Prosecution case against Welts has failed. Nor was even the slightest proof brought that Welts gave any aid to Reicher's experiments. But where there could be doubts about Welts's inner attitude, perhaps as to what intentions underlay his actions here and there, his previous conduct, his whole attitude toward the medical profession, toward humanity, should be decisive.

For this reason I have taken the liberty of submitting to the High Tribunal opinions and judgments from various circles, from the

medical profession, which awarded him its honors, from his associates, who attested his nobility of character, human kindness, and humanity, and from his employees, on whose behalf he always took action with the whole force of his personality at decisive points in their lives. Nowhere does this description indicate characteristics toward which the Prosecutor directed the only accusation which he seems to maintain, which is unbridled scientific ambition, favoritism, and above all lack of respect for human feeling and the idea of humanity.

Every healthy feeling revolts against the proposition that it could have been an end in itself for Prof. Welts to commit crimes, torture human beings, and kill by sadistic excesses. All this fits so poorly into the picture of the man and champion of the progress of medical science, the picture of a person who never cared for egotism and material interests, but only for the promotion of the whole.

In a complete distortion of this picture, the German press, misusing official material, made the assertion that Prof. Welts had, together with Rescher, killed numerous people in Dachau by cold experiments. That such a statement destroys the honor of a German research scientist in the very field in which he had succeeded in saving thousands of lives by his scientific discoveries, is not only unjust, but it is tragic. This treatment of a man who has served medical progress so well demands just compensation. To award this is in the hands of Military Tribunal I, which is called upon to decide. To this Tribunal, I address the plea to restore, by a verdict of acquittal, the livelihood which was destroyed by Prof. Welts by the charges of the Prosecution. I ask that Military Tribunal I pass judgment to the effect that Prof. Welts be acquitted of the charges against him, in whatever form they may have been made.

THE PRESIDENT: Is any of the German counsel advised as to the whereabouts of Dr. Hoffmann, Counsel for defendant Pokorny? We will be prepared to hear from him after hearing from counsel for defendant Brack.

DR. FLEMING: Your Honor, the defense counsel Hoffmann is in the Pohl Trial this morning. As far as he was informed, the translation was not concluded yet, and he counts on being the last this afternoon, in fact, he is, of course, willing to plead this afternoon, but there are a number of other gentlemen here whose translations are finished and who could come first. It was assumed that counsel for the defendant Pokorny would plead this afternoon.

THE PRESIDENT: The interpreters have advised me that three translations are available this morning: Willie, whom we have heard; Froeschmann for Brack, whom we shall hear next; and Hoffmann, as counsel for defendant Pokorny. The interpreters have informed me that the translations for the defendant Moven and Becker-Froyseng are not yet ready.

Dr. Hoffmann will be called upon after counsel for defendant Brack has made his argument.

Prior to calling on counsel for defendant Brack the Tribunal will be in recess for a few minutes.

(A recess was taken)

THE MARSHAL: Persons in the court room will be seated.

The Tribunal is again in session.

THE PRESIDENT: The Tribunal will now hear the argument on behalf of the defendant Brack by his counsel.

DR. FROESCHMANN: For the defendant Brack. Mr. President, your Honors:

The Prosecution has charged Victor Brack before the Military Tribunal for participation in crimes listed under article II of control council law No. 10 as a major war criminal of the European axis powers in the sense of the London agreement of 8 August 1945 according to the Moscow declaration of 30 October 1945.

The defendants of this trial, as far as they were doctors, were accused in General Taylor's opening speech of having committed atrocities under the guise of medical science. The defendant Brack does not belong to these doctors. Brack would probably not even have appeared before you bench as a war criminal, had his superior Buhler been still alive. Brack worked as an expert in the Fuehrer Chancellery and in his field of work had nothing to do with medical problems. Also Brack is not accused by the Prosecution of having participated in medical experiments.

However, Brack is accused of participation in the genocide policy of the Third Reich, in so far as he participated in the euthanasia program and the sterilization experiments was conscious of their destructive purposes.

I.

In the judgment of the IMT the word "euthanasia" or "euthanasia program" is not used at all. It only mentions measures that were taken for the purpose of killing all the old, mentally ill, and all those, who had incurable diseases, in special institutions, which included German nationals and foreign workers who were unable to work. Also in the separate judgment against the defendant Frick only these measures are mentioned.

Any connection, or even the possibility of such a connection between these measures and persecution of the Jews, dealt with in a separate chapter, in particular with the plans drawn up in the summer of 1941 for a "final solution" of the Jewish question in Europe was never established by the IMT nor even hinted at.

1. The word "euthanasia" was until 1939 unknown to Brack as well as to large circles of the German population. That this word originally meant the "art" of dying, or to meet death with serene calm had remained the secret of these scientists, who were interested in the Greek language.

During the course of the centuries the meaning of this word changed. It first became the expression for the endeavour of the physician - originating in humane compassion, developed by the medical art - to alleviate the end of a dying person by soothing his pains. But then the meaning of the word and with it the concept of euthanasia was expanded, and towards the end of the 19th century it meant the assistance in dying through an abbreviation of life, if the life of the suffering person had lost its value in view of an immediate and painful death or as a result of an incurable disease.

It is a fact that this kind of euthanasia has been applied in the whole world since time and can be traced back to the Twelve Tables of the ancient Rome and to the epoch of state socialism of the antiquity.

The assertion of the Prosecution that euthanasia was the product of national socialism and its racial theories can be indisputably refuted through history.

Even if the Prosecution is of a different opinion, the Tribunal cannot overlook the fact that according to the testimony of Karl Brandt, Brack, Pfannenmüller, Koderich, Schultz, Grube, Gertrud Kallmayer and Walter Eugen Schmidt, all independently stated that the measures started according to Hitler's will in the autumn of 1939, only applied to incurably mentally ill and were suspended in 1941. For these measures

the participants used the word and the concept of "euthanasia" in the meaning of the final medical assistance, whether justly or unjustly will be discussed later.

2. It is not uninteresting to note that the word "euthanasia program" appears for the first time in the Brack affidavit (NO 426 Exhibit 160), which has been drawn up by the prosecution after several interrogations, Brack at that time was in a state of physical and psychic exhaustion, and therefore not in a position to realize clearly what he said.

The defense in agreement with the prosecution refrained from presenting a medical expert opinion, but did not, as the prosecution now asserts, refuse to present it.

I regret very deeply that the prosecution, when using the word "euthanasia program" coined by them, characterizes without sufficient proof the euthanasia applied in 1939/1941 for the incurably sick as the conscient and deliberate precursor of the different actions of annihilation which mark the mile stones of the psychic and moral ruins left to the German people by men who had become crazy.

3. If the prosecution had been sure of their assumption, they wouldn't have had to submit those extremely doubtful documents with which they tried to prove in cross examination that the defendant Brack participated in planning the mass extermination of the Jews.

I continue on page 10 of my plea as follows:

Now in the face of such an insufficient evidence which moreover is opposed when numerous cases of intervention for Jews in that period of time -- I only recall the cases Warburg and Georgii -- and in the face of Brack's sworn statements about his attitude towards Jewry, the prosecution can assert that Brack had participated in planning the extermination of the Jews and with that closed the circle, which they drew round the euthanasia of incurable mental patients, the Action 14 F 13 and the final measures to exterminate the Jews.

4. Again I wish to stress that everything that happened after the

stop in August 1941 under misuse of the institutions of euthanasia, had nothing to do with the euthanasia of the incurably insane which was supported by Brack. An opposing view would only be suitable to make an historical record which is not supported by the weight of the judgment of the International Military Tribunal, but merely corresponds to a view which just in the decisive points is void of every substantiated basis.

II

On the same line of collaboration in the extermination of the Jews lies the assertion of the Prosecution that Brack had sterilization experiments carried out which brought death or permanent harm to numerous helpless victims.

The Defendant Brack does not deny that he submitted suggestions to Himmler which dealt with the mass sterilization of Jews. The Prosecution considers the suggestions as seriously meant. I agree with the Defendant Brack, when he admits in his direct examination that it is possible for a reader without detailed knowledge of the circumstances of the origin and the intentions to get such an impression. The question now arises:

How should a man who never was himself an opponent of the Jews suddenly make suggestions implying toward the Jews?

1. In this connection I may be permitted to devote a few words to the personality of the defendant Brack, since only with full understanding of his inner thoughts can his actions in connection with the charges made against him, of sterilization experiments and collaboration in euthanasia, be given due consideration.

Russia's most profound poet of the 19th century, Dostoevsky, in his novel "The Idiot" puts in the mouth of Prince Myshkin as proclaimer of his faith in the unending power of the human soul, which overcomes all evil and darkness of life, the words:

"Pity is the most important and perhaps the only law of existence of humanity."

Although he did not know it, this quotation became for the Defendant Viktor Brack the yardstick of morality in his acts in life. Not only when knowledge of the intentions of Himmler's entourage showed him the terrible auspices which threatened the Jews from the year 1940 on. Not at the time when Hitler's decree of the summer of 1939 brought him in contact with the problem which had moved the heroes of antiquity. No, in the youthful heart of the defendant and into a mature age the pillar of his character - almost a passion - had always been "to want to help in all things which brought the misery and the suffering of his fellow men to his attention, and a corresponding absolute readiness to help which put his will into action. Thus "sympathy" - literally "suffering with" his fellow men - became for Viktor Brack the spiritual motor force of his acts.

Sympathy with the poorest creatures of humanity induced Brack to co-operate in the execution of the idea of euthanasia. Sympathy with the concentration camp inmates, who had been robbed of their freedom for years, occasioned Brack to suggest several "amnesties", through which tens of thousands of concentration camp inmates were granted the good fortune of returning to a life of freedom.

Sympathy with the prisoners, tortured to the point of spiritual collapse moved Brack, in the early summer of 1941, to pass on Buehler's order for medical examination of the mental wrecks in the concentration camps.

2. Another outstanding characteristic appears to us in the picture of the personality of the Defendant Brack:

His sense of justice led him in hundreds of cases to intervene for the just interests of Jews and part-Jews when they confidently came to him in their distress. I need only mention the cases of Warburg, Ollendorff, and Georgii. His feeling of justice, paired with strong personal sympathy, led him in dealing with all sorts of matters in the of the Fuehrer, especially in the question of the release of concentration camp inmates, to adopt the so-called "weak line".

Brack did this without consideration of the fact that such a policy of tolerance would necessarily draw down upon himself the antagonism of Bormann and Heydrich or the displeasure of Himmler and might expose him to the danger of being sent to a concentration camp himself.

These statements are not based on vain arrogance of the defendant or an attempt to surround the defense of Brack with the gloriola of a person ostensibly motivated by humane feelings. From numerous affidavits and testimony of witnesses these qualities of Brack's shine crystal-clear.

But it would minimize the significance of these observations if I did not also sketch the shadows which fall on these bright colors in the picture of Brack's personality.

Sympathy is doubtless one of the feelings which seize the core of a human being's personality. To reject sympathy as an inconsiderable sentiment of the heart as stoic virtue demands, would conflict with natural feelings, deny the pride of modern man, humanity, in whose name the victorious powers have called the defendants to judgment; for sympathy means, as the Defendant Brack so well said, participation of the heart in the sufferings of others.

3. But, as humanly good as sympathy is, as a moral commandment it is only relative. Before sympathy can exert its influence on the will, it needs to be examined for the purity of its composition, or in other words, it needs purification and discipline by reason.

In this respect we see a weakness in Brack's character insofar as, for lack of restriction to a concrete field of work, he repeatedly failed to show the necessary sensible consideration. He gave way to impulsiveness in things, the import of which it was outside his capacity to judge.

Thus, in his character, reason was more or less overshadowed by the urgings of his exaggerated altruism. Let me remind you of the testimony of the witness Ederich, the affidavit of Tuessling, that Brack was not without justification called a "political Parsifal", or of his own admission that out of stupidity he let himself be involved, in the case of his sterilization suggestions, in a thing which he did not understand.

Whether such conduct was from his childhood on a component part of his psychic background, or whether it was the effect of his own distress, which came about as a result of the Versaille treaty, through the loss of his home and the destruction of his plans for the future:

This involvement in constitutionally determined thinking constitutes in Brack's life the fateful tragedy which, in the judgment of all the witnesses, allows a man who is helpful, decent, and modest in his thinking be suspected of crimes against humanity.

4. Thus, his urge to rebel against inhumane actions drove him, who was entirely unconcerned to submit to Himmler in the spring of 1941 unless sterilization suggestions with the aim of preventing the danger of general sterilization which was threatening the Jews.

In the course of his examination as a witness Brack described his relation to Himmler from the very beginning of his acquaintance, his original impressions of belief in the personality of Himmler and his humanity, the arising of misgivings and doubts, their pacification, and then the horrible disappointment until his inner break in 1942, occasioned by Himmler's announcement of his sterilization intentions and still more of his later extermination intentions toward the Jews. Brack also described in an extremely realistic way the reasons for his last appeal to Himmler's instincts in June 1942 (NO 205, Exh. 163) and revealed the attempt to exploit Himmler's realistic thinking in regard to the procurement of labor, which in his spiritual distress seemed

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to him the last possibility for rescue and decided him to send such a letter to Himmler.

5. Rack's attitude toward the Jews has been proved by numerous affidavits.

From childhood on he had various friendships and acquaintances with Jews; he continued to mix with Jews at a time when personal dangers were threatening him on account of the fact he was a Party official. When he was active in the Fuehrer's Chancellory he intervened in numerous cases on behalf of the interests of Jews and half Jews. At the same time as he wrote his first letter he energetically and successfully intervened on behalf of Professor Warburg and preserved him and his institute for Humanity. Various Jewish circles expressed their thanks and their gratitude to Brack on account of his personal courage. After the intention of the leading people to deport the Jews to Poland in a disgraceful way became known for the first time, Brack drafted plans for the establishment of a Jewish State in Madagascar.

All these facts, which not even the Prosecution can deny, make it appear quite impossible that with his suggestions Brack had intended to participate in Himmler's destructive intentions or wanted to support them, all these facts prove that in his urge to help he wanted, from then on, to do nothing but looking after the interests of the Jews. Brack believed he had to serve them by showing them a certain, though childish looking, method which for a layman like Himmler didn't permit the discovery with certainty the desired effect with its many 'Ifs and Buts'. That way, in the first place, Brack hoped to lead Himmler astray from his sterilization plans. Should, however, Himmler regard the method as suitable for an experiment, then, Brack hoped, the long period which was necessary for the preparation of such experiments, could win such a lot of time that the end of the war which he expected with certainty would call a halt to all these plans.

It is undisputable that the method suggested by Brack was entirely unpracticable, from the point of view of the x-ray technician as well as from the point of view of the x-ray specialist, as can be seen from Brack Exhibits 48 and 49. These scientifically reasoned expert testimonies of Professors Rump and Stumpf, who are recognized authorities, together with the affidavit of the witness Grube (Brack Exhibit 27) permit to attach probability to Brack's further statement about the changes made in expert opinion of an x-ray expert which was given particularly for this purpose; therefore this statement of Brack's is, to say the least, to be regarded as not refuted, even if I did not succeed in spite of the help given to me by the Tribunal, to obtain a confirmation of these facts by the expert himself from the Russian Zone.

While, in the first letter, a certain place is occupied by the intention that the sterilization should be unnoticed, this point of view could not only be abandoned in the second letter, because in the meantime larger numbers of people learned of the intention to exterminate the Jews, but it had even to be left out of the letter, to make Himmler fall with greater certainty for the chance to use the Jews for work. In June 1942 this was the only way to make Himmler give up his intention to exterminate the Jews.

If Himmler had accepted this proposal, then, of course, it would not only have saved the 2 to 3 Million, of whom Brack wrote, but it would have saved all the Jews from extermination; because it would run counter to all reason to exterminate 6 - 7 millions of Jews from the very start, if perhaps many more than 2 - 3 millions of men and

women fit for work could be found among their number. With that Brack thought he had once again won the necessary time, until the fight with Russia, which he thought at that time still promised success would have been brought to an end. Think of these ideas of Brack's whatever you like: Considering his mentality and his somewhat primitive reasoning his statement appears at least as probable that he wanted to make a last attempt, even if it was not thought over up to its last consequences, still to turn the fate of the Jews as a completely disinterested person: thereby Brack was always convinced of the ineffectiveness and harmlessness of his method.

To quote a Greek philosopher, "nobody is able to fathom the ground of the soul, and though you travel every road, so deep is the bottom." Brack had no need to commit an intellectual theft in order to copy Pokorny's motives. Brack had told me his reasons already at a time when he couldn't even speak with Pokorny. Forces stronger than every reason slumbered in his soul: To help and to help again, even if hundreds of thousands should be subjected to an experiment which, in his opinion, was entirely innocent, if only the many millions could be saved that way. The last thought prompts the lawyer to enquire whether or not in this case there was a so-called emergency surpassing law, in the sense of the so-called theory of weighing goods, which placed Brack before the alternative of either violating a high legally protected value or violating a low legally protected value, and whether or not Brack was therefore entitled to violate the lesser value, because there was no other way out to save the higher value. Therefore you will have to decide the question whether or not after the weighing of the two evils in Brack's activities the intention to commit a Crime against Humanity can be

recognized at all, if he decided to sacrifice a legal right of small value belonging to an insignificant number of people before sacrificing the legal rights of high value belonging to a great mass of men. Now I turn to Euthanasia, page 24:

- 1.) The dreadful fate of the incurable insane, whose tragic and somber sufferings have again and again confronted humanity with insoluble problems, has for a long time been of particular importance for the concept and application of euthanasia.

The concept of treating insane persons as sick has become accepted only slowly. To be sure, it can already be found in Plato's "Republic" and in later ages also it never entirely vanished. But again and again the concept was visited by assertions that an insane person was evil or was even possessed by the devils that allegedly were fermenting him. In the age of the deplorable witch trials this delusion reached terrible proportions. Thus, in the cultural history of man the development of the care of the insane is one of the darkest chapters.

It was only in the middle of the eighteenth century that mental disorders were recognized as disease and it was seen that institutional care was expedient. Thus, in the course of time insane asylums came into being in which, in addition to a large number of cures after longer or shorter commitment in an asylum, hundreds of thousands of spiritually dead persons were housed, often for many years and decades, completely cut off from the outside world.

Professor Leibbrand, Dr. Pfannmüller and Brack have described types of such spiritually dead. Their emotional

responses do not extend past the most elementary processes, verging on the animalic. Out of all rapport with their environment and the human community, utterly incapable of moral thinking, they stand at an intellectual level that animals often achieve. Dependant on outside help, even in the most primitive everyday matters, they are divorced from the human community by the nature and consequences of their affliction, with no prospects of improvement, to say nothing of cure.

The concept of redeeming these empty human shells from their misery is not a modern one.

As early as 1516 the English Lord Chancellor, the Renaissance philosopher, Thomas More, imbued with the spirit of Humanism, made in his book 'Utopia' proposals for Christian reform of State and society which, although limited by his age, were nevertheless meant very seriously. Among them were also proposals for a gentle mercy death which the church and State could grant the insane person for humane reasons.

Philosophers, legal scholars, doctors, and theologians have since then concerned themselves with this problem which is known today under the name 'euthanasia'. They have thrown light on the question of the justification in destroying so-called 'life unworthy of being lived' from the most diverse points of view, have affirmed that justification and denied it.

Not only in Germany but also in France, Norway, Denmark, Switzerland, England and America, liberal socialists and free masonry circles the concept has found further and further dissemination.

Long before the advent of National Socialism, German

literature produced a number of books with a positive orientation toward applying euthanasia to the incurably insane. Let me draw your attention to the writings on monistic ethics in the period before the First World War and to Exhibit 496, which the prosecution itself termed the standard work, the book of one of the most renowned German scholars on criminal law of the last century, Binding, and of the highly esteemed Professor of Psychiatry at Freiburg University, Hoche: The title is "The Admissibility of Destroying Life Unworthy of Being Lived."

2) From these few references it can be seen that the question of euthanasia for the incurably insane has been discussed and propagated for quite awhile by men whose human and liberal attitude and whose juridical and Christian orientation cannot in any way be doubted. It cannot be wondered at that the Catholic Church has opposed euthanasia. It holds unwaveringly to the principle that the State cannot permit itself such an action without offending the precepts of religion. But for it characteristically enough it is not the question of humanity but the viewpoint of the sanctity of life that is decisive. It is a fact that needs no proof that the church and the State have frequently come into conflict over such problems and that the church, although still struggling against the laws of the State, has finally yielded, and this not only in Germany.

The history of this problem has also sufficiently proved that the question of euthanasia has been passionately affirmed by its adherents for ethical reasons, and has been denied fanatically by its opponents, likewise for ethical reasons. Both, adherents and opponents, cite in their behalf the precepts of humanity.

The ethical reasons adduced by the two sides are the perfectly understandable consequence of the various attitudes on the part of men, States, and peoples to the question of Humanity as has been demonstrated to us not only in wartime, but equally, in the post-war period.

'Humanity' does not arise in us as Heraclitus portrays it in his philosophy, from the "koinos kai theios logos" of which everyone has a part in his soul a priori, through his contact with the absolute world. Even today the concept has not yet been clearly defined in positive law as the final deposit of an absolute legal idea -- this is particularly true in international law-- and such a definition would probably also be lacking in the future.

3) The prosecution discussed most exhaustively all the individual directives and measures within the framework of euthanasia.

In the course of presentation of evidence -- I refer to the testimony of the witness Schmidt -- it was ascertained that Brack had nothing to do with the working of the Reich Committee for Children with Hereditary and Constitutional Afflictions. I can therefore dispense with discussing this point, the more so since the same points of view are here valid, perhaps to an even greater extent, as in the question of euthanasia for the incurably insane.

On page 30 I go on about this point.

As regards the latter, Brack has not denied his participation.

4) The treatment of this matter during the presentation of evidence was only necessary in order to refute the prosecution's charge that Brack was the leading man in the euthanasia program. The defense has brought proof to the

contrary. Reichsleiter Bouhler, according to Hitler's decree, was responsible for carrying out euthanasia. There is documentary proof of this responsibility in Karl-Brandt-Exhibit 4 a and 4 b. Everything that Brack did he did only as Bouhler's deputy, whose orders he carried out.

His position in the euthanasia program did not even correspond to that of an assistant and was less important than that of a general secretary who is the administrative official in a government office. Brack's position was altogether subordinate. He had no right to make any independent decisions. He was not the liaison man for the T 4, as the prosecution claimed. Brack's position, which was described by the prosecution as so important, must not be over-estimated, even though outsiders have sometimes judged it incorrectly; Rather it must be placed in its proper proportion on the basis of the true facts as determined during the presentation of evidence.

5) Euthanasia, your Honor, is a question of conscience. Every official activity achieves its inner meaning only through the philosophic idea that informs it. The essential ethical attitude of a person can only be recognized and adjudged on a metaphysical basis. Brack's motives that induced him to participate in the euthanasia program for the incurably insane was deepest pity for these most wretched human creatures, whose delivery from suffering is a desirable thing from a humane point of view, as the witness Leibbrand could not deny.

So, and only in this way, can and must Brack's activity in euthanasia and his acceptance of it to be evaluated. He did not accept it lightheartedly but only after the most thorough study of literature on the question and after personally seeing mental institutions and their unfortunate inmates.

Brack's actions were not determined by social theories or considerations of expediency such as were ascribed to him with the purely fictitious phrase about "doing away with useless eaters. He was guided by purely ethical considerations which provided his conscience, after careful scrutiny, with objectively valid norms. Brack has stated them comprehensively in his final remarks on the euthanasia problem, and submitted his theories to the verdict of public opinion in the film "I accuse".

6) However many as the grounds may be alleged for the justification of euthanasia for the incurably insane, reference to such grounds would still, for lack of legal basis, be of no importance de lege lata. The premeditated and deliberate killing of a human being remains murder if it is done for ethical reasons.

Brack can therefore not be denied his general criminal responsibility for his participation in euthanasia unless he has some grounds which exonerate him.

In justification of his acts Brack cited Hitler's declaration of 1 September 1939, of the contents of which, as well as the oral explanations given at the time, Bouhler informed the defendant Brack when giving him the assignment to participate in the preparatory measures for euthanasia for the incurably insane. Brack did not make it clear that he construed Hitler's declaration as a Fuehrer decree" which obligated him to carry out Bouhler's assignment. The question with which the I.H.F. concerned itself so deeply, regarding the importance to be attached to this defense, can therefore be left out of consideration in this defense of Brack.

But the defendant Brack did claim that he, like associate and all other persons involved, regarded Hitler's assignment as a completely valid legal basis for carrying out euthanasia, and also considered Hitler justified in issuing such a decree with force of law.

7) Therefore Brack's defense culminates in the fundamental question of whether Hitler's declaration of intentions of 1 September 1939 can be considered such a legally unobjectionable state act which eliminated the injustice of killing a human being inherent *de lege lata* in euthanasia of the insane.

The treatment of the question in this room encounters great difficulties insofar as there is not only considerable ignorance of certain peculiarities of the German position in constitutional matters but above all a great difference between continental European and transatlantic jurists in constitutional and legal thinking. Law and morals have for centuries been sharply differentiated on the European continent in juristic and above all in legislative thinking, in contrast to the states across the ocean. This historical fact must be taken into consideration, for only then can the realization be reached that in a question of German constitutional law only that development can be decisive which legal training has had in Germany in deviations from the constitutional law of the Weimar republic since the Enabling Act of 24 March 1933 and the Head of the State law of 1 August 1939.

With these laws Hitler was given all authority as head of the state and chief of the government, in full knowledge of the Fuehrer principle which had been in operation for over a year, with approval by the plebiscite of 19 August 1934.

From this time on Hitler incorporated the will of the people and the resulting functions. He had thus become the Supreme Legislator of the

Reich. A concluding resolution of the Reichstag was only the confirmation of his primary declaration of his will.

Among the independent promulgations of laws, which were represented as direct emanations of his authority, the declarations of Hitler's will were at first called "decrees" and later uniformly "Fuehrer decrees" assumed the most important role. In them the distinction, still customary under the Weimar constitution, between legislative and executive is overcome, as Hitler proclaimed in his Reichstag speech of 30 January 1937 in the words: "There is only one legislative power and one executive." Therefore the decrees united material law with organizational measures and administrative directives, especially insofar as they were addressed only to a group of persons gathered together in a certain community. Proclamation in the Reich Law Gazette (Reichsgesetzblatt), countersigning by the competent departmental minister or later the competent chancery chief no longer played a decisive role in 1937. The Fuehrer principle was already in full operation at this time. It no longer tolerated the dependence of the authority to promulgate original laws which was granted to the Fuehrer by the plebiscite of 1934 on the observance of formal regulations. The only decisive thing that remained was the fact of proclamation of the will of the Fuehrer, not its form. Hitler's decree of 1 September 1939 addressed to Brandt and Buhler, was therefore in form a legally quite acceptable state act of the head of the state.

As a result in the examination of the development in legal history of the Fuehrer principle in the Third Reich agrees with the testimony of the witnesses Lammers, Engert and Best. This testimony is underlined by the standpoint of the Reich Minister of Justice Gurtner and Schlegelberger as representatives of supreme Reich authorities, as transmitted to us by Lammers and Engert. Finally, it is affirmed by

University Professor Dr. Hermann Jähreiss, who a few days ago dealt with the questions arising in this connection in great detail and exhaustively in the jurist's trial before Military Tribunal III. I may ask the High Tribunal in judging this legal question to consider these statements.

8) Brack was convinced of the legality of this decree, on the basis not only of juridical but also other effective indications of much more significant independent steps taken by Hitler in domestic and foreign policy.

Brack's conviction, that of a non-jurist, of the legality of the Fuehrer decree, based on the explanations and information of his juristic associates and the concurrent or at least now dissenting statements of the highest representatives of the Reich Justice authorities at the meeting of General Public Prosecutors on 23 April 1941 (Brack Exh. 36) can therefore not be doubted.

Even if you deny the legal validity to the Hitler Decree, though I regard it as valid, Brack committed a legal error at least as far the particular legal position of Hitler within the State is concerned, according to which Decree is otherwise illegal activities are to be excused. This legal error is suitable to abolish his guilt or at least the grave guilt of intention. According to German law valid at the time of commission this question is to be answered absolutely in the affirmative. According to that, a so-called error outside of criminal law - which is indeed the error about the legal validity of the Decree of 1 September 1939 - excludes the unlawful character which is an essential of the term intention.

9) Of course, the law giver set limits to the exercise of the powers of the Fuehrer. The limits were, where his acts were no longer in accordance with general human feeling. Human feeling, however, does not

root in logos, as said afore. Its limits are found generally, and within the framework of Euthanasia in particular, not to be absolute, but to use a word of Herakleitos, "pent's rhei", vague -after all what has been said during this trial about the history of Euthanasia and the arguments of the religious, ethical and legal opinions.

The contents of the Decree didn't mean anything basically new and alien. A definitely limited number of experts was in a cautious way entrusted with the judgment of that, which in the course of the years has repeatedly been discussed and demanded by competent people, as doctors, lawyers and philanthropes.

The State as well as the Church have recognized exceptions to the divine prohibition to kill for the cases of death sentences and killings in battle. A general decision on the problem of Euthanasia, which never rested during the course of thousands of years, was evidently not the intention of the Decree.

Moreover he created only the personal mitigating circumstances of the not existing conscience of illegality, as far as the men mentioned therein, and the persons, whom they used for the execution of their order acted in conformity with the individual instructions of the decree. The decree therefore neither transgress against the limits that universal moral law has set.

10) Brack according to his entire ethical attitude towards the problem of euthanasia was of the opinion that he acted in accordance with the laws of humaneness. He knew that the concept of humaneness can be construed variously from various points of view. He pointed out during the presentation of his evidence that the christian concept of humanity is different from that of the modern champion of the euthanasia idea and that humanity is cited not only by theologians but also by atheist members of a compassionate humanity. Brack believed in good faith that in his acts he was not only carrying out a legal decree of Hitler but was behaving in accordance with the precepts of

humanity. For the opponents of euthanasia to grant this good faith to the ever ready and honest man Brack does not mean that the opponent is relinquishing his own point of view, but is an expression of a most lofty sense of justice.

11) The duty to maintain secrecy which Brack and all the other participants in the in the euthanasia measures were under does nothing to change this. The prosecution's assumption that this betrayed Hitler's innermost consciousness of the illegality of his decree has not been confirmed. Secret decrees were by no means appearances under Hitler's rule. From the very beginning on Brack repeatedly made efforts with Bouhler to have the secrecy lifted because it was without purpose and led to difficulties. Shortly after the inception of euthanasia the fact of it was known to large segments of the population and had become an open secret in the fertile ground of which rumors sprouted like weeds. Consequently even at the beginning of 1940 Brack emphatically demanded the issuing of a formal Reich law, on the grounds that euthanasia for the incurably insane was, in its effects and extent, a matter concerning the nation and the public. He personally worked on the draft of this law.

The rejection of the signing of a formal Reichstag law by Hitler is perhaps the most striking evidence that ground for secrecy assumed in the indictment cannot be correct, but that other reasons must have been the motivating factors. Whether these considerations of war policy or other processes of thought were decisive for Hitler did not come to Brack's knowledge. Not the least important reason for Brack's creating the film "I accuse" was to induce Hitler to repeal the secrecy regulation. The legal arguments which I could give at much greater length on the question of the Fuehrer decree of 1 September 1939 and Brack's criminal responsibility would overstep the time at my disposal. I have consequently attached the legal opinion of

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University Professor Dr. Karl Engisch of Heidelberg once more to my written plea for the information of the Tribunal. This document was not admitted in evidence as an exhibit for Brack during the presentation of my case. I expressly refer to this explanation and ask that you make it the subjects of your deliberations in arriving at your judgment.

In his opening speech General Taylor pointed out that the application of Euthanasia to non-Germans would not have been permissible even if there had been a law in force in Germany.

The evidence proved that, according to the various statements of witnesses, Euthanasia was confined to German mental patients. Foreigners, foreign nationals, as well as Jews, were expressly excluded. It could not be proved by the evidence that such persons were subjected to Euthanasia before it was stopped in August 1941. Consequently, the contrary has to be regarded as proved. The decree and its execution, therefore were strictly confined to the limits imposed on Germany by the generally valid principles of the law of nations or by international agreement.

General Taylor in his opening speech admitted the enactment of legally valid principles about Euthanasia in countries outside of Germany; condition that would merely be the maintenance of certain safeguards. Such safeguards were provided for sufficiently by the detailed filling out of questionnaires and by expertizing the questionnaires according to medical points of view; issue of directives to the experts on the basis of expert-medical consultations; appointment of experts and top experts; personal observation of the insane in the institutions and asylums like the Euthanasia institutions; consultation of the Administrative Health agencies of the Reich Ministry of the Interior; and by the right of appeal of every physician participating in the procedure, right down to the last Euthanasia doctor.

With these criteria of Euthanasia, closely bound with the critical judgment of the individual case, all prerequisites seemed to be given - according to Brack's point of view, - to guarantee a safe and orderly procedure of Euthanasia. Brack was anxiously anxious to make sure they were obeyed according to the Bouhler directive.

Brack felt it as deeply regrettable when, in spite of all that, abuses became apparent here and there. It was beyond his powers and co-

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poofity to prevent them.

Decisive for him was: the thought, born out of compassion, to release the poor creatures from their sufferings painlessly and unnoticed by themselves, provided medical expertizing has made sure that he was incurable and therefore, though he did, didn't lack not every sense of life, but had lost every will to live because his mind and soul were buried. To Brack it seemed to run counter the dignity of man to live a life unworthy to live only for the sake of the will to exist.

In my Closing Brief I have assembled all the arguments with regard to the charge of SS membership, which are appropriate to refute also this point of the Indictment. I herewith refer to it.

I am at the end of the critical evaluation of my argument. The case of Brack is a very problematic case. The defense fully recognizes the weight and the importance of pro and contra. After a collaboration of several months I was in a position to acquire a complete picture of Brack's personality. I believe in his humanness and in his sincerity, and I consider him unable to have ever pursued destructive aims. It is the principle recognized in the American concept of freedom that every accused of a crime has to be considered innocent, until the proof of his guilt has been established through the evidence that is beyond every reasonable doubt. Taking everything into consideration, I can think of no more appropriate words to define the considerations that should form the basis for the verdict in this case than those uttered by Judge Phillips, when, at the conclusion he voiced his opinion in the verdict against the defendant Erhardt Milch in the proceedings before Military Tribunal II, as follows: "When a prominent American jurist was applying this God-given principle of freedom he spoke as follows: 'If after considering and weighing the entire evidence you find that your thoughts are confused, your convictions shaken as in a storm, and that your judgment, like the dove in the Flood, finds no resting place, then, the law states, you must acquit.' "

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THE PROSECUTOR: The Tribunal will now hear from counsel for defendant Pokorny.

May it please the Tribunal,

a few weeks ago the Defendant Dr. Adolf Pokorny was on the witness stand here and made an explicit statement about his letter to Himmler in October 1941, document No. WD-035, exhibit No. 142. The High Tribunal could learn from the statements of the defendant Dr. Pokorny that he states the true motive of his letter to have been to prevent Himmler from carrying out an intended crime on humanity, in putting him on a false trail and offering him, in the plant *Caladium seguinum*, a drug for the purpose of sterilization which neither suitable for single cases nor for general use for sterilization or castration.

During the Trial and, particularly after the presentation of evidence for the Defendant Dr. Adolf Pokorny, I have been repeatedly asked what is my attitude to the motive stated by Dr. Adolf Pokorny and what I think about it.

I, as his defense counsel had to consider that the defendant Dr. Adolf Pokorny, from the beginning, as well as during interrogations, as also during the whole time of this trial, has repeatedly emphasized that the actual motive of his letter was contrary to the objective contents of the letter.

I had to consider that the defendant Dr. Adolf Pokorny characterized the witness Trux the reason already in spring 1942 as the real motive which he submitted here to the High Tribunal. That was at a time when no indictment was in view for him yet. The witness Trux stated this in the course of the presentation of evidence under oath to the High Tribunal.

I had to consider that the defendant Dr. Adolf Pokorny stated a number of medical reasons from which claims to have drawn his conclusions when writing his letter that it was impossible to carry out a sterilization or a castration with *Caladium seguinum*. I have not had that much

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medical training that I could understand in detail in how far these purely medical reasons could actually convince the physician of the impossibility of the use of *Caladium seguinum* for sterilization or castration.

But I have understood that there were only two actual possibilities for sterilization or castration in 1941/1942; that the surgical one and the one carried out by X-ray. All methods of sterilization or castration by drugs, such as drugs, hormones, lack of vitamin-E, etc., were only theoretical possibilities which only could be obtained under big difficulties with a small laboratory animal and could not in any way be transmitted to the human being.

I understand that the most impossible, the most hopeless and the least consolidate procedure was a sterilization or castration with the plant *Caladium seguinum*. I understand that in addition to that there were the extra medical reasons, such as the difficulties of the cultivation, the gaining of the plant extract, the establishing of hot houses and everything else. It is therefore not absurd to think that a doctor could believe that nothing could happen with *Caladium*.

I also understand that the defendant Dr. Adolf Pokorny thought his proposal rather safe from a discovery, even though it was impossible to carry out, because a doctor has a certain superiority to a lawyer like Himmler and only medical people and botanists could recognize the unworkability of his proposal from the beginning. The actual course of things has proved, as shown by document Pokorny no. 24, exhibit No. 24 that the botanist Professor Quenzelburg, to whom the letter of the defendant Dr. Adolf Pokorny was given for his expert opinion, at once pointed out the impossibility to carry out this proposal. Only Himmler, who apparently was attracted to anything medical which departed from the sound and normal school medicine, thought it necessary to follow this project and went on with it. The fact of this method of thinking by Himmler was not unknown, and the defendant Dr. Pokorny states, and counted upon it, thinking that the letter would have its effect and that, on the other

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hand, his real motive could not have been so easily proved by the rulers of that time.

I finally had to consider that the defendant Dr. Pokorny was neither a member of the NSDAP, nor one of its organizations, and, because of his education, his social connections and his family ties, could not have been a "yes-man" of the Third Reich, but everything speaks for it that he, who had neither relations nor organizational connections to the rulers of the Third Reich or their organizations, was an opponent, if not even a political persecutor. Based upon these facts, which cannot be considered as subsequent constructions or excuses, the defendant Dr. Adolf Pokorny stated his motives to the High Tribunal and he hopes that the High Tribunal will believe him under these circumstances. It can be held against him that this letter, which must have been written for the very purpose for which it has obviously been written, proves his real personal attitude towards life and that everything else is nothing but an excuse. But, so many things have happened between Heaven and Earth which appear unbelievable, but are true nevertheless that it can be thought worth considering by the objective observer of this state of affairs whether the motive stated in the letter is the correct one or whether the motive stated by the defendant Dr. Pokorny might be really the true one.

In this connection it must be borne in mind that the proceedings during the trial brought out the fact that, what the defendant, Dr. Adolf Pokorny, heard, as he says, from a security service man about a planned mass extermination, was actually true, and that a plan was ready as early as 28 March 1941 daily to sterilize 3-4 thousand people with an X-ray plant consisting of 20 machines, as is shown in document NO-203, exhibit No. 161.

Furthermore it is known to the court that as early as 1941 the mass extermination of Jews was in full swing in Auschwitz and in other camps, and that Himmler's plan for mass extermination thus was in full execution. From an objective point of view the evidence in this connection established

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the fact that no experiments could have been undertaken on human beings with the drug proposed by Dr. Adolf Pokorny, and that furthermore this plant, caladium seguinum is completely unfit to carry out sterilization as well as castration in the real sense of these words. We must further not consider the hypothetical possibility that one could kill the generative faculty of a human being by means of a general poisoning with caladium seguinum, since this is possible, too, by starvation, or by using caffeine, or other drugs. Such means were not specific sterilizations like the ones planned by Himmler who wanted to kill the generative faculty, but retain the ability to work; these means would have been identical to extermination, as it was carried out much more easily and quickly in the gas chambers of Auschwitz, Maidanek and Lublin.

As for the detailed explanations of the defendant, Dr. Adolf Pokorny about his motives, I should like to ask the High Tribunal to gather them from his testimony and his affidavit, document Pokorny No. 29, exhibit No. 29, and from my closing brief.

I do not want to quote them in detail, but rather turn now to legal considerations as they come up in the case of the defendant, Dr. Adolf Pokorny.

It is an established fact that the defendant, Dr. Adolf Pokorny, wrote the letter of October 1941 to Himmler. Control Council Law No. 10 is the legal basis for the legal classification of this letter. This law contains legal abstractions, as for example, the abstraction of murder, of being a culprit, of aiding and abetting the culprit, of planning, and so forth. How these legal abstractions, however, are to be interpreted to suit the special case, and, above all what their definition is, cannot be drawn from Control Council Law No. 10. We know from the definitions of the German criminal law who is considered to be a culprit, what is to be understood under the term attempt, and so forth. However, it is not immediately sure, whether or not these abstractions are also applicable to Control Council Law No. 10. Furthermore, nearly every case is different, and the question will have to be answered over and over again, if this or that fact is to be subsumed under the provision of the Control Council Law.

It is my opinion that for the terms "culprit" and "attempt", used in Control Council Law No. 10, the definitions of German criminal laws should be applied.

Control Council Law No. 10 was made in co-operation by all four occupying powers. It represents, therefore, spiritually a uniform entity. On the other hand, the interpretation of the above mentioned legal abstractions is different in the criminal law systems of each of the occupying powers. Murder, being a culprit, aiding and abetting the culprit, and planning, to mention these

examples only, are defined differently in Anglo-American criminal laws than in the Russian or French criminal law systems. If in each zone of occupation the interpretation were to take place in accordance with the criminal law system of the occupying power of that zone, the result would be, that the very same case could possibly result in different punishment in the different zones. This result would be unfair and would also be contradictory to the uniform entity of Control Council Law No. 10. It must be mentioned, moreover, that the International Military Tribunal pointed out repeatedly in its verdict that the Hague Convention contains binding regulations for the signatory powers who must carry them out in the Occupation laws. In article 43 of the appendix to the Hague Convention of 8 October 1907 concerning the laws and customs of land warfare we find that agreement was reached for shaping Occupation laws giving consideration to the laws of the occupied country, insofar as no compelling obstacle prevails. This forces us to the conclusion that according to the Hague Convention interpretations must take place by use of national laws, in our case the German criminal law, if the Control Council Law requires an interpretation in solving a legal question, and if this interpretation cannot be made on the basis of the Control Council Law itself, because it represents itself only as a kind of legal frame-work. (Rahmengesetz).

If we examine the letter of the defendant, Dr. Adolf Pokorny, from the point of view of German criminal law we can discern two parts, when viewed objectively. The defendant, Dr. Adolf Pokorny, declares in the first part of the letter that "the enemy must not only be defeated, but also annihilated." He points to 3 million Bolsheviks who are

prisoners of war. In the second part of the letter he occupies himself with the idea of undertaking sterilization, and he proposes to use the plant, *caladium seguinum*, as means to this effect.

The defendant, refers in this connection to the article of the business firm of Madams and Koch in the periodical for experimental studies on animals and to a popular science periodical "Die Umschau"; they mention that the firm above carried out experiments on animals with the plant, *caladium seguinum*. These publications gave interesting insights into the experiments on animals carried out with the plant, *caladium seguinum*, but would not let a physician conclude that with this plant human beings could also actually be sterilized; furthermore, the authors expressly declared in their article that there was no possibility of sterilizing human beings.

The letter of the defendant, Dr. Adolf Pokorny, did not find in the person of his addressee a man who heard of such thoughts of mass extermination for the first time. To the contrary, it arrived at a time when mass extermination had already started; at that time the firm will have to carry out these mass exterminations could no longer be changed. The letter of the defendant, Dr. Adolf Pokorny, could, therefore, from an objective point of view, at most give Himmler a hint as to what course he could eventually take to carry out his already existing plan of extermination in an additional form. On the basis of the defendant, Dr. Adolf Pokorny's letter Himmler ordered the firm of Madams and Koch to continue the experiments on animals with the plant, *caladium seguinum*, and to report as to whether or not there was a possibility of sterilizing human beings with this plant.

Ideas which were suggested to Himmler, of carrying out experiments with the plant, *caladium seguinum*, in concentration camps as soon as possible, and of starting the building of hot-houses in which to cultivate this plant, remained in the sphere of wishful thinking, and they never got to the point of execution. Only the firm of Madaus and Koch resumed its animal experiments. These experiments on animals, however, brought no results and ended in 1944 with a report which was submitted to this High Court as document No. 28, exhibit No. 29; this report gives clear proof that they did not make any progress until the end of the war, but were still in the phase of fruitless experiments on animals. In this connection we might leave undecided, whether or not the aversion of the responsible men of Madaus and Koch to helping Himmler was a factor in the failure of the animal experiments. The witness, Dr. Koch, at any rate, answered here in the witness stand, - when questioned by the prosecutor, if he had made success of the animal experiments with the plant, *caladium seguinum*, impossible, only because of his aversion to co-operate in Himmler's plan - that he made the animal experiments reluctantly and inaccurately, since he did not like to work for Himmler, and that, furthermore, there is no possibility nor way of making use of the plant, *caladium seguinum*, for sterilization or castration. An inaccurate or knowingly false exploitation of the animal experiments with *caladium seguinum* would, therefore, have been only a very praiseworthy, but in fact unnecessary sabotage of Himmler's orders; it would not alter the fact that the problem of using the plant, *caladium seguinum*, for sterilization or castration still remains unsolved. This concurs with the unanimous opinion of all

medical and pharmacological authorities, as can be found in the documents Fokorny No. 19, 20, and 30, exhibits No. 27, 28, and 30, and in the document of the prosecution No-3347, exhibit No. 546.

If we assume now, at first, that the defendant, Dr. Adolf Fokorny, was convinced from the beginning that the plant, caladium seguinum, was unfit for sterilization and castration, and if we assume that he wrote the letter to Lord Himmler astray and to prevent him from committing a crime on humanity, then there was doubtless no crime committed according to German Criminal law, because the will to see any objective characteristics of criminal acts realized is missing. He, who instigates an attempt which cannot succeed knowing that the experiment performed on his instigation is not a principal and must therefore remain exempt from punishment.

There is only one reproach one could make in this case against the defendant Dr. Adolf Fokorny. This reproach could be that he, even with the best intention, had mentioned the idea of a mass extermination, and that he should have considered that this idea would strike root in Himmler's mind, and that he (Fokorny) would become the author of an idea and a plan which would be executed by Himmler, even with quite different means and under quite different circumstances. In this case a sentence pursuant to article II 2 d of Control Council Law No. 10 would be possible, which states that a punishment may be imposed if someone is connected with the planning or the execution of crimes against humanity, without any regard to the intention of the person concerned. The only requirement is that the act was committed intentionally, and according to German criminal law the "dolus eventualis" would be sufficient in

this case. However, it has been shown by the evidence in particular and by this trial in general that the defendant Dr. Adolf Pokorny had not to discover the idea of a mass extermination, but that this idea existed a long time before he conceived it, and that Himmler's plan born from it was already executed to its full extent since 1941. In this respect I have already pointed out above the mass extermination in the gas chambers of Auschwitz, Maidanek and Treblinka and have referred to Document NO-204, Exhibit No. 162 which shows the intended sterilization of 3 to 4 thousand persons per day. It was not the defendant Dr. Adolf Pokorny who conceived the idea of a mass extermination or who established a plan for it, but this idea was already existent, and the plan, too, was existent consisting in the use of Cyclon B, in the surgical sterilization and the sterilization by X-rays, all of them means which were sufficient to execute the idea and the plan, even without the author of the letter, the defendant Dr. Adolf Pokorny. The defendant Dr. Adolf Pokorny therefore can only have shown a means for the execution of an established plan, and according to his own statement he only intended to do that, because he has stated that he had heard about this plan from an SD man, even if only in a vague and rough outline. The defendant Dr. Adolf Pokorny is therefore not a principal because in the actual execution of the extermination plan he has neither realized himself a characteristic of the actual fact by any action of his own, nor had he intended the success of the action as an action of his own.

According to German criminal law he is also not an instigator because the plan for committing the extermination had been established long ago. It was just this plan which

he had heard about that inspired him for his action. Himmler who had conceived the plan of extermination was already, and without his (Fokorny's) assistance determined to execute it. The instigation, however, would presuppose that the will for the crime is stimulated in the instigated person. This, however, was already abstractly impossible in view of Himmler's determination to execute his plan of extermination in any case, and an instigation to something which already is existent in the determination if the principal is impossible.

There only remains that the defendant Dr. Adolf Fokorny might have been an abettor. Such an abetment might have consisted in the fact that the defendant Dr. Adolf Fokorny has pointed to the plant *Caladium seguinum* as an efficient drug for mass sterilization for the purpose of extermination. Such a sterilization, however, has not been performed, neither in a single case nor in mass, and therefore much the less has such an extermination plan been executed because the plant *Caladium seguinum* is completely inefficient as a drug for sterilization or castration purposes. Even if the defendant Dr. Adolf Fokorny had believed in the efficiency of the plant *Caladium seguinum* or if he had believed that in a near future it could have been made use of, this might have constituted at the best an abetment to an experiment with an inadequate means because, as we know today, the plant *Caladium seguinum* is objectively inefficient in the actual meaning for sterilization and castration purposes. Such an abetment to an experiment with an inadequate means would to be sure, be punishable according to German criminal law, but it would involve a double mitigation of punishment, i.e. with regard to the experiment as well as with regard to the

abatement.

In the present case, however, the evidence has shown that there is no question of an abatement as the plant *Caladium seguinum* has not been tested on any human being but only on animals. The execution of the crime which concerns us in the present case has therefore not been started, such the loss the national extermination of millions of humans.

I have already explained above that the witness Dr. Koch stated that the reluctant and inexact performance of animal experiments as asserted by him could not alter the fact that there was no chance to perform a sterilization or a castration with the plant *Caladium seguinum*, and that his explanations to this respect should not be interpreted in such a way as if without this kind of performance there would have existed a chance to sterilize or to castrate humans with *Caladium seguinum*. However, if contrary to this result of the evidence one would become reconciled to the idea that all the same this kind of performance by the responsible men of Koch and Kadus would be in any way connected with the impossibility of performing the sterilization with the plant *Caladium seguinum*, this too would not change the result, because a perpetrator, who is lucky enough that somebody else gets him off his aim when firing his pistol, is not a murderer anymore, since the success of his deed has been prevented even though this might have happened against his will and without his consent. However, I present this idea exclusively as a hypothesis since it cannot be supported by the evidence; the plant *caladium seguinum* in itself proves the impossibility of maintaining the idea of an "accomplishment".

The result of the above arguments is therefore that in this case everything should be considered as preparatory actions only. A preparatory action, however, is not punishable under German law. But what the defendant Pokorny did is therefore even less punishable since he, from the legal point of view, rendered only assistance to such a preparatory action.

However, in order to take into consideration all actions and ideas which could be possibly considered I will approach the question whether or not a psychological assistance prevails, since the letter of the defendant Dr. Adolf Pokorny in one way or another resulted in, or could have resulted in, favouring the entire plan of extermination, above being considered as a mere recommendation of the medium (drug) to be applied. Such an effect would be seen in the fact that the approval of a plan might not incite a perpetrator, decided to commit the crime anyway, but might possibly encourage him in his decision. But here, too, can I only repeat what I have stated above already, namely the fact, that it is impossible to presume that Himmler needed an encouragement in his decision by the letter of the defendant Dr. Adolf Pokorny, because of his (Himmler's) criminal decisiveness to carry out the extermination which was proven already by the start of extermination of Jews. The phrases which the defendant Dr. Adolf Pokorny uses in his letter also were not needed by Himmler as an encouragement of his decision. They could not influence him. They only caused a reaction that the writer of the letter was a man who wanted to emphasize his devotion with all these phrases, more could Himmler not see from it. That excludes, however, a psychological assistance of the defendant Dr. Adolf Pokorny and here, too, does he remain free of guilt.

So far I have argued the interpretation of "committed crime", "instigation", "complicity", "attempt" and "preparation" in accordance with German law and have come to the result that a punishable act of the defendant Dr. Adolf Pokorny in the sense of the penal law does not exist; now I would like to examine the question whether the Control Council Law No. 10, considering the facts of this case, contains in itself a directive to the effect that a punishment of the defendant Dr. Adolf Pokorny is called for, based upon the fact that he had written a letter and mailed it to Himmler, regardless of the interpretation of "committed crime", "instigation", "complicity", "attempt" and "preparation".

First of all, there is no doubt that mass sterilization represents a crime against humanity, in spite of the fact that the ruler at that time, in this case Himmler, approved of such a crime against humanity, and had the power to prevent punishment of the perpetrator. That follows from Article III c which expressly states that the home law (Heimatrecht) in a case like that is irrelevant. This provision, however, means in my opinion, only a reference back to general ethical standards which would consider the carrying out of such a plan criminal; those ethical standards cannot be influenced by accidentally opposing power conditions. This however, does not exclude, as I tried to prove so far, the fact that all general conditions of the German Penal Law, as far as the Control Council Law No. 10 did not change them, must be considered in the evaluation of such a crime.

First of all article II 1c provides that all crimes hereby regulated have to be completed since article II 1c deals with inhumane acts, murders, rapes etc. which had been

actually committed. From that one may draw the conclusion that a pure planning of such a crime against humanity is not punishable under article II 1c IF the crime itself was not completed.

Also article II 2d of the Control Council Law No. 10 does not say anything different. If, following this

article II 2d, the planning of a crime is already a punishable crime, this does not mean the exclusively preparatory action, but the planning means here an actual participation in the crime and calls for a direct action and actual beginning of activities. Would an act have been committed the participant would even then be punishable if he would not have participated in the punishable act himself. In the case under consideration, however, an actual realization (of the plan) did not take place, because the plant Caladium Seguinum has been tested exclusively on animals but not on human beings, and only the experiment with human beings would represent an actual realization (of the plan). It appears unnecessary to me to repeat again in detail what I have stated above, namely that the plan of extermination existed long before Pokorny's time, that Himmler was decided to carry out a mass extermination in any possible way, even by sterilization, and that the defendant Dr. Pokorny only suggested a useless medium. Nothing happened because of this useless medium and nothing could happen; all that did happen, because of the suggestion of the defendant Dr. Adolf Pokorny, remained within the limits of preparatory actions to a crime against humanity. Since, however, such a preparatory action is not punishable under Control Council Law No. 10, a participation in such an action cannot be punishable either.

I have already examined the fact as to how much the

defendant Dr. Adolf Pokorny influenced the entire plan of mass extermination. It has now to be determined how far he is possibly responsible under the penal provisions of Control Council Law No. 10. Under a-d article II 2 of the Control Council Law No. 10 four ways of participating in a crime are listed, which can be applied to the case of the defendant Dr. Adolf Pokorny.

According to article II 2a a person can be punished who has collaborated actively in committing a crime against humanity. The defendant Dr. Adolf Pokorny cannot be considered as having participated actively since he has not committed any act directed towards the execution of the crime and since he did not intend to commit the act as his own, but only intended to give a hint to Himmler.

According to Paragraph II 2 b he who aids the perpetration of such a crime or has ordered or supported it is liable to be punished. Defendant Dr. Adolf Pokorny had no authority to give orders, neither could he lend his support since conceivably this would only have been possible after the deed had been committed.

If in the following I now define my attitude regarding the word "Beihelfer" I answer that this word is derived from the translation of the English "accessory". The German translation "Beihelfer" refers to a certain extent to the institution of aid according to German law, consequently, essentially it would comprise the idea of the accessory's participation. English law however makes no substantial difference between abettor and aider. This is also not surprising, for the question of German aid has just shown us that the instigation includes such aid and on the other hand there is always a weaker form of instigation in psychological aid. The gradual difference in the criminal

mind when abetting and when aiding can be brought about by punishment of the individual case, but does not necessitate that both conceptions must be separated. Under the word "Beihelfer" the instigation as well as a psychological aid can therefore be subsumed. Now I have already stated above that there is no question of defendant Dr. Adolf Pokorny being an abettor, nor could he have given psychological aid. I have thereby pointed out that Himmler in his plan of mass extermination did not first need to be instigated and also did not receive any psychological assistance, as the wording of the letter from defendant Dr. Adolf Pokorny shows. Insofar a participation of defendant Dr. Adolf Pokorny, according to the conceptions of the instigation and the psychological aid does not exist, since there can be no thought of an abetting in these methods without the success not coming off. Himmler however would have still continued his plan of mass extermination without defendant Dr. Adolf Pokorny's letter and his letter has insofar no influence on the whole plan. The letter can easily be omitted without the situation being changed in the least. Therefore, the actual form of aid is eliminated since defendant Adolf Pokorny only aided the preparatory act. In this regard too I have already made sufficient statements above. I have pointed out that beginning to carry out a criminal act on humanity can only be seen in the use of the Caladium seguinum plant on a human being and that the more animal experiments can be regarded as an act of carrying them out. According to Paragraph II 2 c, he who has participated by consenting to a crime on humanity is furthermore liable to punishment. The English text says: "took a consenting

part therein". The English wording shows that more than mere shouting or writing is needed; therefore, in my opinion the mere consent is not sufficient, especially as otherwise all jo malists would have been guilty of a crime on humanity, but rather is it necessary that by consenting some condition has been laid down for the success.

However, I have already stated above that it is true that the whole plan may have been influenced by defendant Dr. Adolf Pokorny's letter, but as regards this I have stated further that Dr. Adolf Pokorny's position, having had no connections with authoritative men and not having belonged to an organization, was much too subordinate and unimportant to enable him to influence or direct Himmler in any way by his letter. However, Dr. Adolf Pokorny's consent, as it is objectively manifested in his letter, is thereby not causal for a crime committed on humanity and with that the presumption of the facts, as laid down in Paragraph II 2 c, is not fulfilled.

Finally, I still have to deal with the question of applying Paragraph II 2d, according to which he who has been associated with the planning or execution of a crime against humanity is liable to punishment. I have already stated above, when dealing with the question as to whether a punishment according to Paragraph II 1c is concerned, that the definition of the Control Council Law No. 10, paragraph II, 2 d, points out that since there it is only a question of acts committed, a mere preparatory act is not sufficient. In itself it would be contradictory if the definition of crimes on humanity would emanate from accomplished deeds, but in the interpretation reference would be made to

preparatory acts not actually committed crimes on humanity, so that when interpreting the law a broader view on penalty would be taken than the law itself demands.

Systems of criminal law, too, so far as I can ascertain at times expressly contain a special indication where the legislator wishes to provide for punishment of a preparatory action, too. Thus a preparatory action in German criminal law, although it is otherwise not punishable, is expressly made subject to punishment by the former regulations regarding high treason. Exactly the same thing, however, is true in my judgment of Control Council Law No. 10. From the fact that punishability of a preparatory action is not expressed, it follows conclusively that it is not intended to be punishable.

Such punishment, of course, can only be justified when a certain causality exists, which is manifested by the fact that the idea conveyed, the plan, the agreement, or the consent contributed to the success of some cause.

Anyone whose plan or idea had no result, however, remains unpunished like any journalist or letter writer who, on both sides of this war, may have expressed ideas about the treatment of the opponent, ideas which, looked at objectively, in themselves were objectionable according to ethical standards. To what extent beliefs are to be punished here is another question. In the case of German citizens they would have to be judged according to the de-Nazification law. Control Council Law No. 10, however, recognizes no crimes of belief, but only crimes of action. The motive of the defendant, Dr. Adolf Pokorny, then, need not be considered here at all. It need only be considered that the total plan for extermination was already well established in Himmler's mind, was not influenced by the letter of the defendant, Dr. Adolf Pokorny;

and his suggestion which the defendant, Dr. Adolf Pokorny, gave Himmler in his letter did not get beyond the stage of a preparatory action, which in itself is not punishable, so that the aiding and abetting of this preparatory action by the defendant, Dr. Adolf Pokorny, must remain unpunishable even in accordance with the special factual provisions of Control Council Law No. 10.

If I take a position in regard to the question of the conspiracy, I do so — in view of the statements of the counsel for the defense whom I succeeded and the fact of the conclusion reached in Military Tribunals I, II, and III in regard to the question of the "conspiracy" — merely with a general reference to the fact that in the case of the defendant, Dr. Adolf Pokorny, in my opinion, there is no foundation for implicating him in a conspiracy. The mere fact that in my legal opinion the defendant, Dr. Adolf Pokorny, has not made himself culpable under Control Council Law No. 10 excludes the possibility that he could have taken part in a conspiracy, as claimed here by the prosecution. Added to that are the general circumstances, from which it follows that the defendant, Dr. Adolf Pokorny, neither belonged to a Party organization nor to a government agency, but was an independent country medical practitioner in Komotau at the time when he wrote the letter. The fact, too, that he knew neither Himmler nor anyone else personally, and especially none of the defendants here, makes it impossible for me to believe that he was implicated in a conspiratory circle.

The defendant, Dr. Adolf Pokorny, wrote his letter by himself. He had a very definite goal in view and nowhere expressed the thought that he wished to be included, in anyway, through his letter, in the Himmler circle.

But Himmler, on the other side, was much too all-powerful and much too presumptuous to have been tempted to draw such an insignificant man as the defendant, Dr. Adolf Pokorny, was in comparison to him, into his circle and to let him participate in anything. Himmler did not even deem the defendant, Dr. Adolf Pokorny, worthy of a reply.

Pohl, in his letter to the deputy Gauleiter of Niederdonau, Document No. 042, Exhibit No. 155, writes 10 months after the date of the letter of the defendant, Dr. Adolf Pokorny, that Himmler had applied himself at his -- Pohl's instigation -- the problem of sterilization with the plant, *caladium seguinum*, many months earlier. So unimportant was the defendant, Dr. Adolf Pokorny, for Himmler in this connection that Pohl even designated himself as instigator of the idea of sterilization with the plant, *cladium seguinum*, although the defendant, Dr. Adolf Pokorny, had written a letter about this subject; this letter, however, had apparently been forgotten long ago.

Since, on the one hand, a decision on the question as to what motive lay behind the letter of the defendant, Dr. Adolf Pokorny, can, in case of doubt, be made in favor of the defendant, Dr. Adolf Pokorny, on the basis of an ancient legal principle, and on the other hand according to my legal view-point no punishable fact exists at all within the meaning of Control Council Law No. 10, I propose the acquittal of the defendant, Dr. Adolf Pokorny.

THE PRESIDENT: When the Tribunal reconvenes we will hear from counsel for the defendant Hoven and counsel for the defendant Becker-Freyseng.

The Tribunal will be in recess until 1:30 o'clock.

(A recess was taken until 1330 hours).

AFTERNOON SESSION

(The hearing reconvened at 1330 hours, 18 July 1947.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal will now hear from counsel for the defendant Hoven. Counsel will have one hour or until 20 minutes to three o'clock.

DR. GAWLIK (Counsel for the Defendant Hoven): Your Honors, Mr. President, gentlemen of the Tribunal:

"Quot homines, tot sententias" There are as many opinions as there are people. Especially now, at the conclusion of the evidence in the proceedings against Dr. Hoven. One realizes that this phrase of Cicero's is not generally applicable. Everyone who has experienced the submission of evidence against Dr. Hoven should see clearly one point: this man is not what the prosecution has represented him as at the beginning of the trial in this court room.

This man is not the typical representative of the camp physicians in the concentration camps. This man is by no means the typical representative of those accomplices who willingly supported Himmler in carrying out his program on destruction in the concentration camps.

Not long ago, the press, the mouth piece of public opinion, presented the following question to the public: Is Dr. Hoven guilty at all? And if one may speak of any guilt in this man, has he not already been punished through his suffering in the concentration camp of Buchenwald, when he was imprisoned by the Gestapo from September 1943, and, finally through the further restriction of his personal liberty until this day?

It is significant that this question is being discussed at all in public and that Dr. Hoven is not simply condemned because he worked in a concentration camp as a doctor.

Is Dr. Hoven guilty? According to the indictment, when answering this question, two things must not be omitted.

1) Merely a question of law must be decided. When making this decision, one should be guided however by any moral or ethical

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principles. This question must rather be decided soberly and without passion, just as the proceedings were carried on in this court room, solely and only according to principles of law, the principles which jurisprudence has developed during the course of centuries on the basis of the laws of logic.

2) When answering this question, the yardstick of normal times and conditions must not be applied. The extraordinary conditions of those times rather must be considered instead, under which the defendant Dr. Hoven has acted.

The great Roman philosopher and poet, Lucretius, has already said in his well known work about "The Nature of Things" "During a high sea and turbulent winds, it is comfortable to watch the effort of others from ashore."

It is of course, very simple for someone who has not experienced what went on inside a concentration camp surrounded by electrically charged wires, to say: The life of one man, even that of a criminal is sacred. The killing such a person therefore is wrong under all circumstances.

This difficult problem can not be solved with such philosophical or religious doctrines which do not have even general validity. No decision of law or of justice can be based on this.

I have therefore endeavored to answer in my closing brief the charges that were brought against Dr. Hoven only by taking into account the general principles developed in law and jurisprudence.

The indictment against Dr. Hoven can be summarized in the following three points.

- 1) Participation in a conspiracy
- 2) Commission of war crimes and crimes against humanity
- 3) Membership in an organization which has been declared criminal by the International Military Tribunal, namely membership in the SS, which was called criminal by the IMT.

Concerning Point II Dr. Hoven is charged specifically with

- a) collaboration in the typhus experiments in Buchenwald.
- b. Participation in carrying out the Euthanasia Program.

I wish to treat count #3 - Membership in the SS. In this connection I refer to pages 203 - 305 of the closing brief. There I have shown in detail that Dr. Hoven:

- 1) Left the General SS before 1st of September 1939.
- 2) Did not join the Waffen SS voluntarily after the first of September 1939. He was drafted rather, into the Waffen SS by the State in such a way that he had no other choice.

Here I want to treat in detail only count of indictment #2, "Commission of war crimes and crimes against humanity."

On pages 10 to 15 of my closing brief I have, first of all, explained the legal problems. Considering prior studies of the science of International Law which preceded the drafting of Control Council Law #10, especially the report of the Inter-American - Juridical Committee of the 30th of July 1945, I must come to the conclusion that war crimes, within the meaning of Control Council Law #10, are only those violations of law and common usages of war as were perpetrated on member of the United Nations.

The prosecution has tried, in its final plea, to justify the application of Central Council Law # 10 to punishable actions committed against Germans by saying that Law #10 was not only a principle of International Law, but also simultaneously a National Law of Germany. I wish to make the following reply to the prosecution:

Application of Law #10 as a national Law of the country should be a matter reserved to the German Courts only.

According to recognized rules of International Law, the judges of an occupying power are only competent for criminal acts which threaten public order and safety in the area administered by the occupying power. This can be seen from article 43 of the Hague Convention 1907. Moreover, the principles of International Law confirm competence of the occupying power for criminal acts which are committed during the occupation, and for the prosecution of crimes, i.e. violations of laws and usages of war, perpetrated on members of United Nations. International Jurisprudence does not recognize the competence of courts of the occupying power to exceed these functions.

During the occupation of Belgium in 1914-18 the German Reich was reproached for having instituted courts for the prosecution of those crimes, courts which did not meet these prerequisites.

In this connection I refer to the statements of the well known American teacher of International Law, James Wilford Garner and his work: "International Law and World Order Volume II page 81 especially on page 78 where Garner writes expressly that the jurisdiction of Tribunals of the occupying power is restricted to violations of a military nature only.

The prosecution of individuals for crimes against humanity is unknown in International Law. This can be seen from the aforementioned report of the 30th of July 1945 which was composed, among other, by the well-known American teachers of law, Campos, Fenwick, Costa, Robedo, and Nieto del Rio. This report expressly states that only the most serious violations of the laws of warfare can be considered as crimes against humanity. This view coincides with the opinion of the International Military Tribunal which also did not consider crimes against humanity as separate criminal acts, but which expressly declared that a crime against humanity is only then committed if this action simultaneously involves a crime against the peace, that is, if this constitutes prep-

aration for a war of aggression or a war crime.

I now come to the result set down on page 15 of my closing brief. Crimes against humanity are only punishable if they simultaneously fulfill the act of a war crime, or if they were committed in connection with, or in execution of, a war of aggression, and the most serious crimes are to be considered as crimes against humanity.

Since in this proceeding the charge of preparation or execution of a war of aggression has not been made, a crime against humanity is only given if the prerequisites of a war crime exist.

In part B of my closing brief I have then evaluated the results of the evidence.

If I have understood correctly, the prosecution has explained in its final plea that in this proceeding not every piece of evidence should be considered by itself. This maxim is incomprehensible to me. In a criminal proceeding the probative value of each piece of evidence must, first of all, be carefully investigated and after such an investigation, the evidence, in toto, can justify the finding of guilt.

I have confronted the charge of execution of typhus experiments with four defensive assertions:

a) The defendant Dr. Hoven did not act as the deputy of Dr. Ding-Schuler constantly but formally represented him once only temporarily in Block 44 and 49 without undertaking any action. During the time of acting as deputy, no typhus experiments were carried out.

The defendant was Dr. Ding-Schuler's permanent deputy only in Block #50 where the vaccine for German Wehrmacht troops was produced.

b) The defendant Dr. Hoven did not participate in typhus experiments in block 46.

c) The defendant Dr. Hoven, as far as was possible for him, tried to prevent the execution of typhus experiments.

d) The defendant Dr. Hoven did not select the experimental persons. Merely because he could not prevent execution of these experiments ordered by Himmler and upon instigation of the illegal camp leadership he

revised the selection of experimental persons, to prevent in this way, the use of political prisoners and especially non-German prisoners for these experiments. For particulars I refer to statements in my closing brief pages 16 to 69.

I draw the attention of the Tribunal especially to my statements on pages 37 to 41 where I answer the views of van Leeuwarden and Hans Vondeling. There I have explained that the statements of these two persons have no probative value for the following formal and material reasons:

1) Both persons failed to make their statements under oath. In a criminal proceeding, however, a person can only be given monetary fine or sentenced to suffer forfeiture of liberty by reason of a sworn deposition. This general procedural rule of all civilized states applies also to American court procedure. The legal comments about this point are set down on page 36 of my closing brief.

2) Both persons were not subjected to cross examination although I applied for this expressly in the session of the 23rd of June 1947, as is shown on page 10113 of the German transcript.

I have repeated this application in writing on the 26th of June 1947.

Although, the prosecution holds the opinion that I was granted the right of cross examination because these two persons were interrogated in Holland by a commissioner appointed by the court. The prosecution has here however overlooked the fact that according to American Law the privilege of cross examination is only then extended if the witness appears personally in court and is confronted with the defendant. These legal principles have been set down in detail on page 39 of my closing brief where I quote decisions of American courts of Justice.

3) The testimonies of Hans Vondeling and of van Leeuwarden have been shaken by the statements of the witnesses Dorn, Pieck and De Witt as set down in detail by me on pages 39 to 41 of the closing brief in reference to decisions of American courts of Justice.

It can therefore be considered as proved that Dr. Hoven did not participate in any way in the execution of typhus experiments in the Concentration Camp Buchenwald. Furthermore, the evidence has shown that Dr. Hoven did everything in his power to prevent the execution of these experiments which had been ordered by Himmler. Hoven was the first and only camp physician who undertook to work against the order of Himmler insofar as he prevented to have prisoners of the Buchenwald Concentration Camp infected with typhus lice. Details may be found on page 46 to 50 of my closing brief.

Dr. Hoven is further charged, in connection with the typhus experiments in Buchenwald, with having selected the experimental persons. The evidence has shown in this respect that Dr. Hoven did not select any persons, but that he moreover, only temporarily upon instigation of the illegal camp leadership revised the selections of domestic and foreign political prisoners, so as to prevent in this way, that the political department, i.e. the Gestapo, used political and thus non-German prisoners to carry out these experiments. The results of the evidence to these points is found on pages 50 - 52 of the closing brief.

In order to prove the correctness of its assertion that Dr. Hoven participated in the typhus experiments in the concentration camp Buchenwald, the prosecution referred specifically to the affidavit which Dr. Hoven submitted on 24 October 1946.

This statement lacks all probative value because the conditions for submitting an affidavit which the Tribunal imposed in the session of 3 January 1947 were not fulfilled. My attitude in regard to the affidavit can be found in detail in pages 63 - 68 of the closing brief.

I would like to emphasize here only the following points of view:

During his examination on the witness stand Dr. Hoven stated in detail, in the afternoon session of 21 June 1941 and in the morning

session of 23 June 1947, that he did not know a large number of the English words which the affidavit contains. The words which Dr. Hoven did not know can be found in the transcript of the morning session of 23 June 1947. The ignorance of these words shows that the defendant Dr. Hoven did not understand the meaning of the affidavit submitted by him. I am, however, very grateful to the prosecution for having submitted the transcript of the interrogation of Dr. Hoven on 22 and 23 October 1946, in the form of Document NO 4068 and 4069, shortly before the presentation of evidence was completed. They can be found in Document Book XIX page 105, 116 English. I have stated on page 64 and 68 of the closing brief that Dr. Hoven, during his interrogations on 22 and 23 October 1946, said something entirely different than what is contained in the English affidavit of 4 November 1946 which was made out by the prosecution as a result of this interrogation. Lack of time prevents me from going into this matter in detail at this point. Therefore, I merely wish to point out one serious contradiction.

During his interrogation on 22 October 1946 Dr. Hoven made the following statements concerning the selection of experimental subjects:

"At In selecting prisoners in Buchenwald for the experiments which were carried out by Dr. Ding it was not officially necessary that I make such a selection or sign these lists. Dr. Ding could have simply given the order to make the necessary number of prisoners available. But I did personally concern myself with the selection, since I was asked by the prisoners who did not deserve it would not become victims. I tried to pick only those people who were known to be criminals. After I had left Buchenwald, the same system of selection was no longer retained and the prisoners were simply made available to Dr. Ding by Schober."

Thus Dr. Hoven has unequivocally expressed that he concerned himself with the selection of experimental subjects only to prevent in this way

the use of political prisoners, especially non-German prisoners, especially non-German prisoners, for these experiments. The affidavit of 24 October 1946, however, contains the opposite. There it says: according to the demand I chose various prisoners at random from the list of names. That is end of his quotation. This is entirely different from what Dr. Hoven said during his interrogation of 22 October 1946.

Dr. Hoven never said that he

- 1) selected prisoners according to demand and
- 2) he did not say that he selected prisoners at random and
- 3) he did not testify that he selected prisoners according to the list of names.

Thus no word in the affidavit of 24 October 1946 corresponds to the statements submitted in the transcripts of 22 and 23 October 1946.

Thus the following can be said as a result of the evidence:

- 1) The defendant Dr. Hoven was not the permanent deputy of Dr. Ding in the typhus experiment block 46 of the concentration camp Buchenwald.
- 2) The defendant Dr. Hoven did not participate in the typhus experiments in block 46.
- 3) The defendant Dr. Hoven prevented the carrying out of typhus experiments as far as it was possible for him to do so.
- 4) The defendant Dr. Hoven did not select the experimental subjects for the typhus experiments.

It is a source of special satisfaction for me that in this matter I agree with the opinion which the prosecution already expressed before bringing charges against Dr. Hoven. During the interrogation of 22 October 1946 which I have repeatedly mentioned, the representative of the prosecution said the following about Dr. Hoven "You are lucky that you are not involved in medical experiments. You participated in an unimportant matter." This can be seen from the transcript of 22 October 1946, Document NO 4068, Document Book XIX, page 32 German, page 24 English.

I now come to the charge brought against Dr. Hoven that he partic-

ipated in the euthanasia program. This is the second war crime and crime
against humanity with which the defendant Dr. Hoven is charged.

The statements of the prosecution concerning the count of participation in the euthanasia program are not without contradictions.

The prosecution stated, in the opening speech of December 1946, that Dr. Heyen had personally ordered 300 to 400 Jewish prisoners to be sent to Bernburg.

In the course of the presentation of evidence, the prosecution claimed that the defendant Dr. Heyen had participated in measures ordered by the highest authorities of the German Reich in connection with the euthanasia program.

It follows from the speech by the prosecution itself that the defendant Dr. Heyen could not at all give the order to send 300 to 400 Jews to Bernburg. The prosecution has stated, in great detail, that a great many agencies were set up for that purpose. Agreeing with these statements of the prosecution, the prosecution witness Dr. Mannecke has expressly said that he did not think it possible that Heyen gave such an order, because this transfer to the euthanasia institute was taken care of by Berlin. Confirming this, the prosecution witness Roehmlich said that the transport from Buchenwald to Bernburg was ordered by higher authorities. The result of the evidence on this count can be found in detail on pages 70 to 77 of my closing brief.

But Dr. Heyen did not participate in the carrying out of the euthanasia program, as I have shown in detail on pages 78 to 79 of the closing brief. In this connection, I call the attention of the court to the testimony of the witness Dr. Mannecke. It was Dr. Mannecke who selected the prisoners in the concentration camp Buchenwald, who were transferred to the euthanasia institute to be gassed. Dr. Mannecke is the only witness who, because of his activities, knew best whether Dr. Heyen participated in the euthanasia

program. Dr. Monnecke, a prosecution witness, has expressly testified that Dr. Hoven in no way participated in his work, that is Monnecke's work, in Buchenwald. Specifically, Dr. Hoven did not fill out the questionnaires and did not make up any lists for the medical commission. Nor did Dr. Hoven select the prisoners for action 14f13 as was customary in some other concentration camps. The testimony of Dr. Monnecke agrees with the statements of the witnesses Dr. Horn and Dorn and Gottschalk, Dr. Hoven's secretary, who had been Dr. Hoven's secretary for many years. The testimony of Dorn shows that only one transport left Buchenwald for Barnburg, and this was towards the end of the year 1942. In this matter Dr. Monnecke testified that he selected the prisoners for this transport without the collaboration of Dr. Hoven. I have continued to comment on the testimony of Roehmheld whose testimony is partly contradictory to the evidence, and I have presented the reasons, citing procedural principles developed in American law, why the testimony of Roehmheld and Dr. Kogon cannot properly dispute the statements of the prosecution witness Dr. Monnecke and the defense witnesses Dr. Horn and Dorn. Roehmheld and Dr. Kogon could not, on the basis of the positions they then held in the concentration camp Buchenwald, have the necessary knowledge as to how action 14f13 was carried out. Beyond that, the evidence has shown that Dr. Hoven prevented action 14f13 in collaboration with the illegal camp management of the concentration camp Buchenwald by means of a counter-action which was designated 13f14.

It can be seen from the letter of Dr. Monnecke to his wife, submitted by the prosecution, and from the testimony of Dr. Monnecke, that 1200 Jews were to be sent to Barnburg

in four transports to be gassed. But as the prosecution itself has said, only one transport actually left. The other transports were prevented from leaving by the defendant Dr. Hoven, as the prosecution witness Dr. Kogon has confirmed in agreement with the prosecution witness Dr. Rothchild and the defense witnesses Plöck, Gottschalk, and Jörn. In this connection, I call the attention of the court to the testimony of Dr. Kogon which I have cited on page 102 of the closing brief. Dr. Kogon testified as follows: "I know that, as far as I remember, four transports were to leave for Bernburg in 1942, and these involved chiefly Jews. I believe that at least one transport left. The remaining transports were prevented from leaving through the intervention of Dr. Hoven."

Dr. Kogon also described in what way Dr. Hoven prevented the transports from being made up. In this respect I refer to my statements on page 101 of the closing brief. These statements were supplemented by Dr. Hoven when he was on the witness stand. This evidence also agrees completely with what Dr. Hoven already said in his interrogation on 22 and 23 October 1946. Dr. Hoven stated already at that time that he did not examine the Jews. Dr. Hoven definitely said already then that he never sent any person to Bernburg. When the interrogator put it to him, he declared that there must be evidence in existence to prove that he hid 700 Jews who were to be sent to Bernburg. This I have mentioned on Page 109 of my closing brief.

The result which therefore can be ascertained is, that Dr. Hoven took no part in the action 14 F 13 under which code the Euthanasia program was carried out in the concentration camps. He rather prevented the execution of the Euthanasia program, as far as it was in his power, and

it is only due to these measures of Dr. Hoven which he undertook unselfishly and by risking his life, that 800 to 900 Jews didn't meet their death in Bernburg but survived their camp time in Buchenwald. This has been confirmed expressly by the witness Dr. Kogon. Dr. Kogon stated that it was due to the steps which Dr. Hoven undertook, together with the illegal camp management, that a considerable number of Jews was still left in the concentration camp by the beginning of 1945.

In two further parts of my Closing brief I dealt with the killings which Dr. Hoven either undertook himself or which were undertaken with his knowledge.

In part b), page 112 to 117 of the Closing Brief, I stated that these killings had no connection with the Euthanasia action 14 F 13.

Further I stated, that it can be regarded as proved that Dr. Hoven killed only two prisoners himself and that about 50 or 60 prisoners were killed by order of the leadership of the German and foreign political prisoners with the knowledge of Dr. Hoven.

A legal evaluation of these killings I have set forth in a further paragraph under cypher a on pages 118 to 147 of the Closing Brief.

The legal arguments as set forth in the Closing Brief are taken from the work of the well known American criminologist Wharton, which is called Criminal Law. The first part of this argument contains, under cypher a), the following literal quotation from this book:

According to Common Law, the killing of a man can be either:

- 1) murder
- 2) manslaughter

- 3) excusable homicide
- 4) justifiable homicide

Excusable homicide and justifiable homicide are not punishable.

The present American law does not differentiate between justifiable homicide and excusable homicide. I refer to my Closing brief, particularly to the statements of Wharton in his book "Criminal Law", 12th edition, vol. I, 1932, pages 826 to 879. According to Wharton excuse and justification for a homicide are either:

- 1) repulsion of felonious assault,
- 2) prevention of felony.

The right of self defense, i.e. repulsion of felonious assault is restricted to a narrowly defined number of persons.

On the other hand, everybody is entitled to prevent a crime. I refer to the details contained in my legal arguments, pages 119 to 122 of my Closing Brief.

Killing a man to prevent a felonious crime requires the following conditions which are set forth on page 122 of my Closing Brief:

- 1) The perpetrator must have the bona fide belief that the commission of a felonious crime is immediately impending. It is not a condition that such a crime would actually have been committed. Rather the bona fide belief of the accused is quite sufficient. In this connection I refer to the legal arguments on page 121 of the Closing Brief.
- 2) This belief of the accused must not be negligently adopted.
- 3) There must not be any other possibility of preventing a crime than the killing of a person. In other words - the killing must be the only means available to prevent the

crime.

The prosecution's assertion in its final plea, "One must not kill five to save five hundred", therefore can not be considered generally valid either from the point-of-view of German or American law.

On the basis of the statements of the prosecution, I have not been able to see clearly whether that sentence had reference only to the justification of experiments on human beings or also to the killings which were carried out by Dr. Hoven or with his knowledge.

The justification of the killings is materially distinguished from that of the experiments. Those spies, stool-pigeons and traitors for whose killings Dr. Hoven accepted responsibility when in the witness stand, had planned to commit serious crimes on their fellow-prisoners. Therefore, if the three pre-requisites which I mentioned, are given, we are concerned with cases of justifiable or excusable homicide.

On pp. 123-125 of my Closing Brief, I elaborately explained that these conditions existed in the case of all the killings for which Dr. Hoven accepted the responsibility.

The defendant Dr. Hoven had the conviction and good faith that the spies and traitors who were killed by him or with his knowledge, were about to commit serious crimes, resulting in the death of numerous inmates of the Buchenwald concentration camp. During his examination on the witness stand, Dr. Hoven gave a thorough description of this.

The decision on these killings was not reached by Dr. Hoven

on his own. Dr. Hoven had no cause for that. It was not his life that was endangered by those spies or traitors. It was rather the committee of political domestic and foreign prisoners, many of whom are today holding high office in their countries. Those personalities guaranteed Dr. Hoven that only such individuals would be killed who already had been active and would continue to be active as spies and as traitors. These statements by Dr. Hoven were particularly confirmed by a number of witnesses who were heard on this. These observations may be found in the affidavits I submitted. Above all it has been proven that only such people were done away with of whom Dr. Hoven held that conviction. Dr. Hoven testified to that effect and it has been re-affirmed by the witnesses Dorn, Dr. Kogon, Seegers and Hummel.

In his interrogation of October 23, 1946, Dr. Hoven stated expressly that he killed or knew only of the killings of such persons of whom he was certain that their deaths were necessary to save the lives of a multitude of political prisoners from the various countries. At that early date already he expressly stressed that he refused to carry out any of the killing orders of the camp commander Koch; the prisoners who were covered by his orders were put into the Hospital or hidden in some other way by Dr. Hoven.

2) Dr. Hoven had not negligently adopted the conviction that their killing was essential for the salvation of huge numbers of prisoners.

This is proved first of all through the testimony of the witness Dorn, who gave many details as to the means and methods employed by Dr. Hoven and the illegal camp administration in the conviction of the necessity for the killings. Dr. Hoven supplemented those statements. Furthermore they were corroborated by the testimony of the witness Hummel, Dr. Kogon, Seegers, Philip Dirk, Baron von Plesselt van Berde through their affidavits. I refer to pp. 131-

135 of my closing brief.

3) Actually, the prevention of the planned crimes, i.e., the mass murder of a multitude of domestic and foreign political prisoners, could be accomplished only through the killing of the spies and traitors. There was no other means. What should Dr. Hoven have done to prevent the crimes planned by the spies and traitors? Those spies collaborated with the S. camp commanders to carry out Hitler's program to destroy the political prisoners. To whom should Dr. Hoven have turned? Perhaps to the SS camp commanders who worked with the spies and traitors? Or perhaps to the Gestapo or to the police who worked under Hitler's orders?

There was no other way but the one which Dr. Hoven went in order to prevent crimes.

I showed that with details on pp. 136-147 of my closing brief. There, I assembled the testimonies of the witnesses of prosecution and defense who were heard on this point.

Here, I merely wish to stress the following statements by the witnesses:

In this court room, Dr. Kogon, a convinced Christian and a deeply religious man, said: "There was really no other possibility for the men of the illegal camp administration. I, as a convinced Christian, do not deny those men the right to have killed people in an emergency who in collaboration with the SS endangered the lives of individuals or of many." End of my quotation.

The witness Pieck stated: "It may be that the liquidation of many green inmates and of SS spies employed in the camp may make Dr. Hoven a murderer in the eyes of many; yet, for me and others who understood the real situation, he was a soldier fighting on our side and risking very much."

This very opinion, Pieck - as stated here - expressed also in a letter to the Dutch Minister of Justice, a letter that was co-signed by the City Council of Amsterdam and Mr. Droering, head of a department of the State Institute for War Documentation in The Hague.

Pleck is one of the few who are best equipped to answer these questions, for he belonged to the Committee of domestic and foreign political prisoners which formed itself at Buchenwald.

Father Ketjetan, presently Supreme Abbot of one of the largest religious orders in Czecho-Slovakia, declared that as a prisoner of the concentration camp Buchenwald in the presence of witness Dr. Horn that those killings were an inevitable necessity for the preservation of the inmates who had been abandoned by justice in the camp.

Even the witness of the prosecution, Roschild, had to admit on the stand that it would have been impossible to save 20,000 prisoners if those spies or traitors whom Dr. Hoven killed or of whose killing he knew, had remained alive.

Let me ask in this connection: What would have happened if a man of Kuchnir Kuchnerev's calibre had not been killed, and if the murder of the Russian POW's in the Buchenwald camp had been continued? Would Dr. Hoven not stand before this Tribunal even then? Then, would not the same charge be made against Dr. Hoven as the one levelled against the Japanese Governor of the Philippines who was tried before an American Military Court for not having prevented atrocities and abuses?

In another part of my closing brief I summarized the result of my evidence concerning the good character and reputation of Dr. Hoven in the Buchenwald concentration camp.

On the basis of Wharton's Evidence in Criminal Cases, I described the legal basis of my reasoning and my evidence, by stating,

- 1) the admissibility of the evidence,
- 2) the limits of the evidence,
- 3) the nature of the evidence,
- 4) the value of the evidence for the problem of Dr. Hoven's guilt.

My evidence in regard to Dr. Hoven's good character and reputation, as given on pp. 121-202 of my closing brief, led to the following

results:

- a) The defendant Dr. Hoven saved the lives of numerous inmates.
- b) Dr. Hoven helped numerous prisoners to regain freedom.
- c) Dr. Hoven assisted the prisoners of the Buchenwald concentration camp in their fight for life.
- d) The defendant Dr. Hoven as the first SS man attempted, as far as in his power, to prevent the application of beating as penalty.
- e) Dr. Hoven carried out numerous improvements of medical care in the Buchenwald concentration camp
- f) Dr. Hoven treated the inmates always humanely.
- g) Dr. Hoven's good character is shown particularly by his attitude towards the Jews.

The taking of evidence concerning Dr. Hoven's good reputation in the Buchenwald concentration camp resulted in such a wealth of material that it is not possible to mention all details. Above all, it has been proven on the basis of evidence that Dr. Hoven resisted measures by high SS officials, particularly orders of Himmler.

The Prosecution in the course of the evidence repeatedly asked some defendants to list actions that could be interpreted as resistance.

I deeply regretted that the Prosecution did not submit this question to Dr. Hoven in his cross examination, too. Dr. Hoven would have been in a position to mention not only one, not ten or hundred, but many hundreds of acts by which he resisted the orders of highest authorities.

Let me mention only the case of the seventeen-year-old Jewish inmate; of whom the witness Dorn spoke, an incident I included in my closing brief on p. 196. Dorn related in how moving a manner Dr. Hoven gave medical care to that prisoner, and that he repeatedly went to the sick bed of that Jew, asking him, "Have you any wish?"

From those facts the witness drew the only correct conclusion which I could not better phrase myself.

Your Honors! I can not imagine that a man who exerts great effort on behalf of a Jew, who in the Nazi state really was denied the right to live, asked him for his wishes and hides him in the hospital - that this man should arbitrarily kill prisoners and permit killings which were necessary in the interest of the preservation of the lives of many prisoners.

Furthermore, the witnesses Dorn and Pieck agreed that Dr. Hoven, after the liberation of the camp by the American troops was taken from an American tank by the Jew August Kolm, the trustee of the Jews in the illegal camp administration. Dorn also described how Kolm addressed an American officer: "Sir, don't harm this man, he fought in our own ranks."

At that time there were hundreds, nay, thousands of witnesses in Buchenwald who knew Dr. Hoven's work in the Buchenwald Camp.

Would Dr. Hoven have dared re-entering the camp after liberation by the American Army if he had committed the things the Prosecution charges him with? Would not a tempest of indignation have swept him away if he had been the man as described by the Prosecution? What did actually happen? Dr. Hoven was gladly and cheerfully welcomed by the inmates and treated as their guest for two days until American troops took him into a POW camp.

I am unable to understand with what justification on the basis of the overwhelming evidence that speaks in favor of Dr. Hoven

S M I

The prosecution still calls him a corruptible murderer.

First of all, I venture to ask: Who should have bribed him? The poor inmates who called nothing their own but their lives? Doesn't this observation suffice to demonstrate the absurdity of the charge? In regard to bribery I expressed myself more lengthily on pp. 199-202 of my closing brief.

I further ask: Isn't it true that the mere fact that the co-inmates who were called as prosecution witnesses had to speak favorably of Dr. Jovan, justifies doubts in his guilt?

Let us recall Kirchheimer's evidence? This prosecution witness when asked by the prosecutor whether Dr. Jovan was a "Gefährlich" in the concentration camp, did not reply by saying "Yes", but rather answered "Dr. Jovan enjoyed a good reputation amongst the prisoners."

There is another fact which should shake that charge; I refer to the fact that witnesses have rushed here to testify for him and to serve the truth, - men from the East and the West, from Czechoslovakia, and from the Netherlands. Isn't it also true that the three witnesses who were called here by the prosecution to speak against Dr. Jovan, the former inmates of the concentration camps were saved by Dr. Jovan. I refer to Dr. Jovan, Kirchheimer and MacGill. Dr. Jovan stated personally that Dr. Jovan saved Jovan's life three times. Kirchheimer was one of the 1200 men whom Dr. Jovan had selected for transport to the Bernburg subcamp station. In MacGill's case too it is proven that Dr. Jovan saved him.

The evidence in the case of Dr. Jovan has clearly shown that this man was not a corruptible murderer, but that he was -- to repeat Loch's words -- a man who fought on the side of the United Nations against Hitler and the masters of concentration camps, risking his own life constantly and paying for this fight by spending 17 years in the

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Castro's dungeons and as inmate of the Buchenwald concentration camp.

Such a man who acted so often in the best interest of the United Nations, a man who resisted Hitler's officials so often in the interest of the United Nations, a man who languished for that in the dungeons of the Gestapo and as inmate of the Buchenwald concentration camp -- such a man cannot be called a war criminal and a criminal against humanity before any Tribunal of the United Nations. Thank you.

THE PRESIDENT: The Tribunal will now be in recess for fifteen minutes.

(A short recess was taken)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal will hear from counsel for the defendant Becker-Freysang.

DR. TIPP for Becker-Freysang: Mr. President, Your Honors:

When, in May 1945, German resistance collapsed and the German Reich thereby ceased to exist, the iron curtain was lifted which has hidden so many deeds and activities from the eye of the German public for the past years. As unbelievable as this may seem to those outside, the German public had until then no knowledge of many of the events which had taken place in national-socialist Germany. But I think I can assume that this fact as such had been established as a certainty by the recent trials in no little way by those trials held here in Nurnberg.

The things which before the collapse were completely obscure to the majority of the German people included everything connected with the concentration camps. People in Germany knew that there were concentration camps, they also knew of persons who had been put into them, but nobody, unless he had some direct contact with these camps, actually learned of what took place behind those barbed-wire fences.

The revelations about the true conditions, in concentration camps, about the millions of murders which were committed there, moved the German people to the core. Only with difficulty could they believe what seemed to be proven by facts.

When, during these months, the assertion appeared in the press, that members of the German medical profession had committed enormous cruelties against hundreds of innocent inmates of concentration camps and when detailed evidence of these assertions was supplied, the German people as well as world opinion were inclined to despair of the German doctor, indeed of the German medical profession as a whole.

The charges which were raised were so severe and seemed so well founded that a defense of the German medical men who appear in this trial seemed hardly tenable at first.

Public opinion which had been influenced to such extent, adversely affected the defense in many decisive points. I am sure I was not the only one among my colleagues who had difficulties in securing witnesses and other evidence, because witnesses hesitated to put themselves at the disposal of the defendants.

An additional difficulty was that the whole of the German written material was in the hands of the prosecution. All available material was gone through by the prosecution and was introduced into the proceedings only according to their own point of view. In this respect the prosecution acted entirely according to rules binding for them, but this does not prevent me from stating that the defense, from the beginning, was being put into a much weaker position.

If, in spite of these difficulties, the defense succeeded in undermining the charges which at first seemed so well founded, in some of the essential points, as in my opinion they did, then this result must appear of particular significance.

For many months now, prosecution and defense in this courtroom have reported everything which seemed essential to clarify the facts. The Tribunal must decide now what happened and who among the defendants must bear the responsibility for these happenings. In this connection only the following can be said in general:

The evidence has shown that deeds were done which are not compatible with medical ethics and the principles of medical behaviour. Under the cloak of medical research actions were carried out which are not defensible. On the other hand, however, the fact emerges clearly and unmistakably before the eyes of the Tribunal and before the eyes of the world, that it is not the perpetrators of these crimes

who are in the dock here. The bearers of the names most frequently mentioned here are the very men who escaped human justice through their own hands or who, as Rascher, fell from a bullet from their own ranks.

The fact that crimes have undeniably been committed but that on the other hand the guilty can no longer be called to account, must not result in other men being made responsible for deeds for which they never had to take the responsibility. The desire for punishment must not lead us into a course where the innocent instead of the guilty are called to account.

As the prosecution appears to have been aware from the beginning that those who were guilty of the individual offences and among them of the worst offences, could no longer be called to account, they have tried from the start to throw the veil of common conspiracy over the individual cases and to show everything they submitted in the impenetrable semi-darkness of confusing relations and connections.

The prosecution repeatedly tried to create such connections to the advantage of the common planning doggedly alleged by them. Even though I am of the opinion that particularly in the case of Dr. Becker-Freyse the participation in such common planning on the part of the defendants has in no way been established, it must be pointed out that on the terrifying background which the prosecution intentionally and cleverly created for itself from the start, every incident was in danger of losing the character of an objective fact of the case. It was just that indeterminate and undefined moment in the assertions of the prosecution, who with slogans such as "participation" and "special responsibility" tried to establish the connection between the actual happenings and the persons of the defendants, which was the great danger in this trial.

The prosecution portrayed all defendants in the same style. They were represented as morally and mentally inferior party followers who, having become subject to the party doctrine, no longer cared about the sublime laws of humanity or the medical profession, but who committed cruelties for the mere sake of it without regard to their duties as doctors and human beings.

Against this, the defense, in laborious detail, had to show the defendants as they really were. Only in this way was it possible to crack the foundation of the charge and to shape the personality of each defendant, and every individual case, from the confused mass of collective assertions of guilt which the prosecution had produced, in order to show the tribunal dead and guilt in their true light.

Among all the defendants, the defendant Dr. Becker-Freysong holds a special position.

As I have repeatedly pointed out, the prosecution has not submitted its charges against Dr. Becker-Freysong in detail. In many of the counts of the indictment the defense, therefore, had to work on assumptions. They assumed that Dr. Becker-Freysong was supposed to be essentially responsible because he worked as a Referent or Assistant Referent in the Referat for Aviation Medicine in the Medical Inspectorate of the Luftwaffe. I need not do more than mention how difficult the construction of the defense was made by this lack of substantiation in the charge. In the same way was it necessary to extend the defense into every possible and conceivable direction because of this lack of precision in the prosecution's proceedings in this case.

Altogether, in the indictment the prosecution held Dr. Becker-Freysong responsible for the high altitude and freezing experiments in concentration camp Dachau, for typhus and other bacteriological

experiments in Malsweiler and finally for the Sea Water experiments in concentration camp Dachau.

Neither for the high Altitude experiments nor for the Freezing experiments has the Prosecution supplied the evidence on which they need to base their charge of Dr. Becker-Freyseng's responsibility.

In as far as these experiments are concerned the objections which I have raised in connection with all counts of the indictment apply especially. i.e. the prosecution did not once mention the name of Dr. Becker-Freyseng when dealing with high altitude experiments except in the written indictment. Furthermore they did not even submit one document which originated in the referral for aviation medicine at the medical inspectorate of the Luftwaffe.

Therefore I am of the opinion that the prosecution has not been able to prove by any means that Dr. Becker-Freyseng was in any manner implicated in these experiments which took place at Dachau. Even less has it been proved that Dr. Becker-Freyseng was responsible for these experiments.

With regard to the freezing experiments the prosecution managed to submit some few documents which originated in the medical inspectorate of the Luftwaffe. Only two documents however show the reference number of the referral for aviation medicine.

And as regards these documents the defense has proved during presentation of its case that it was not Dr. Becker-Freyseng who dealt with this letter, but the Referent Prof. Dr. Anthony.

The prosecution was therefore unable to prove in their case in chief that Dr. Becker-Freyseng was connected with the freezing experiments.

In the case of the defense Dr. Becker-Freyseng declared himself that he had been ordered to attend during part of the discussions between Professor Dr. Hippke and Dr. Bascher in June 1942. The public prosecutors could not prove this fact. They have up to this date

not make any such statement. Nobody but Dr. Becker-Freyseng knew that he was present at the discussion part of the time, of which the prosecution knew. He admitted this fact before the Tribunal without excuse and mentioned it as an exonerating circumstance because neither he nor the defense considered this an objective fact constituting a criminal action, on the contrary: For the information which Dr. Becker-Freyseng received in the course of this discussion gave him the impression, that these experiments, which had been planned entirely without his assistance were altogether legal.

One reason for such a view was that he realized that his superior, Generaloberstabsarzt Prof. Dr. Hippke had approved the suggestion as submitted.

Dr. Becker-Freyseng did not hear anything about the execution of the individual experiments.

The first time he heard about it again was when, after they had been concluded, Prof. Dr. Holzschner gave a lecture during the Luftwaffe meeting concerning the cold experiments in October 1943 in Bamberg. This lecture concerned on one hand experiences from actual experiments and on the other hand results of experiments with animals and experiences gathered from human experiments. The last part of the lecture did not reveal that these experiments were at all criminal.

To me it seems particularly important that the realization, that the judgment of Holzschner's report may not be based on those facts which are now known about Rascher's experiments. This lecture has to be judged according to the facts known at the time, and this knowledge did not make it possible to understand from the lecture, that the experiments which were described might have been at all criminal.

The participation of the defendant Dr. Becker-Freyseng in the freezing experiments therefore only consists of participation in a

discussion to which he was ordered by his superior chief, General-
oberstabsarzt Prof. Dr. Hoppke, which revealed nothing to indicate
a criminal plan.

It was also limited to listening to a lecture which did not reveal anything about crimes which had been committed. This lecture was, at the same time, attended by 90 physicians and scientists, who, except for four other defendants, all enjoy complete freedom and some of whom hold professional positions.

The defendant Dr. Becker-Freyseng can therefore not be held responsible for the freezing experiments in particular, or for participating in criminal freezing experiments, based on these circumstances alone.

To determine that his participation in these experiments, insofar as one can call it participation at all in view of the circumstances set down, should be criminal could only be established provided Dr. Becker-Freyseng considered the planned experiments criminal and yet participated under these circumstances.

This cannot be established, however, from the evidence.

Before saying anything further about the experiments Dr. Becker-Freyseng is accused of, which allegedly concern experiments with typhus and other bacteriological problems, the following should be pointed out fundamentally:

The Prosecution left out two decisive facts completely in their entire case in chief. First of all, the fact that Dr. Becker-Freyseng did not hold the position of referent for Aviation Medicine from August 1941 to May 1944, but was merely an assistant referent under the referent Professor Dr. Anthony. The Prosecution presented their case entirely as if Dr. Becker-Freyseng had been the only referent. In fact, they even made him chief of a research institute for aviation medicine of his own, which had been invented for the Prosecution.

The defense proved, on the other hand, that Dr. Becker-Freyseng was mainly responsible for the jobs as assistant referent from August 1941 to May 1944, which had no connection whatsoever with the experiments. The referent Dr. Anthony dealt with all the other tasks of the referat for Aviation Medicine. The defense also proved that the particularly important subject of research assignments was definitely not

handled by Dr. Becker-Freyseng in the referat for Aviation Medicine until May 1944, but by Professor Dr. Anthony.

More will have to be said about that later on.

Concerning the experiments with bacteria which the Prosecution brought forward, they did not maintain that Dr. Becker-Freyseng took an active part in these experiments. In contrast to the high altitude and freezing experiments, the Prosecution reported about experiments with typhus and epidemic jaundice which is, in their opinion, supposed to be the basis for the responsibility of the defendant Dr. Becker-Freyseng.

They submitted a number of documents, some of which bear the file numbers of the referat for Aviation Medicine. On top of that, they mentioned, in an oral plea, that the Luftwaffe issued assignments for research on these subjects, that the research assignments were dealt with by Dr. Becker-Freyseng, and that he even gave orders to the research workers to carry out the experiments which the Prosecution considers criminal.

On the other hand, the following points have been proved by the defense:

- 1) During the years 1941 to May 1944, Dr. Becker-Freyseng, who at that time was assistant referent, was by no means in charge of research assignments within the referat for Aviation Medicine.
- 2) Part of the documents submitted by the Prosecution, in their case in chief, do not bear the file notation of the referat for Aviation Medicine but that of the referat for Hygiene.
- 3) The case in chief of the defense has shown further that, although all research assignments were informally dealt with by the referat for Aviation Medicine, i.e., for purely technical and formal reasons, factual work was carried out in the referat for Aviation Medicine only with regard to research assignments concerning aviation medicine.

All the research assignments in other fields of research were factually dealt with at the respective competent referats.

- 4) On the other hand, all research assignments given to Professor Hagen do not concern aviation medicine at all. They are all in the field

of hygiene and bacteriology. Only the referent for Hygiene, however, was competent to deal with the matters.

Thus, it is certain that Dr. Becker-Freyseng was not engaged in these research assignments until May 1944, and that, until that date, he knew nothing whatsoever about them. That further proves that, after May 1944, he likewise dealt with the research assignments to Professor Haagen only in formal respects, that the factual work was carried out at the Hygiene Reforset.

Furthermore, it is proved that the research assignments, which has been stressed so greatly by the Prosecution, were in reality research subsidies which were granted to the various scientists in order to facilitate their work. These research orders contained neither directives nor instructions regarding the execution of the work. Its execution was not checked upon, such a control was neither customary nor necessary, nor was it at all possible, in view of purely professional reasons. Within the scope of these research commissions, final reports and occasionally intermediate reports were rendered by the scientists. Neither in the intermediate reports nor in the final reports were there contained any details regarding the work which had been completed.

Even if the defendant Dr. Becker-Freyseng had dealt with the research orders given to Professor Haagen, he neither could have given his instructions nor directives for it, nor would he have come to know any of the details.

For this reason, the defendant Dr. Becker-Freyseng cannot be made responsible for anything that is supposed to have been done by Professor Haagen.

But, besides these research assignments, the Prosecution has not been able to submit further evidence which can prove any connection between Dr. Becker-Freyseng and the work of Dr. Haagen.

I should like to draw your attention to the following points of the evidence given by the defense:

Dr. Becker-Freyseng, whom the Prosecution accuses of being responsible for the alleged criminal experiments of Dr. Haagen, has been

examined here as a witness. He stated - in accordance with the evidence just submitted - that Dr. Becker-Freyseng has nothing at all to do with this work.

The defense is hereby convinced that the evidence did, in no way, prove Dr. Becker-Freyseng's knowledge of any details concerning the work of Dr. Haagen, to say nothing of his being responsible for any experiments carried out by Dr. Haagen.

Before we leave this point, I should like to make the following clear:

Dr. Becker-Freyseng is to be made responsible for an alleged criminal activity of Professor Haagen. In order to motivate, however, such a responsibility, the Prosecution ought to have proved, first of all, that Professor Haagen actually did commit crimes against humanity. But the Prosecution completely failed to do so.

The Prosecution has tried to prove this responsibility by submitting a series of documents and by the testimony of several witnesses.

The case of the defense has shown thoroughly that the documents were not able to prove any criminal activity by Dr. Haagen.

The testimony of the witnesses was so vague and confusing that it is even less possible to base any finding thereon.

In order to oppose this extremely weak basis of the evidence for an alleged criminal activity of Dr. Haagen, given by the Prosecution, the defense summoned Dr. Haagen himself as a witness. I shall not go into the details here of Professor Haagen's highly scientific testimony, but one fact certainly is obvious: that his statement has not been reputed, his testimony that his work in the Netzweller concentration camp was purely scientific and entirely unobjectionable from a medical point of view.

All these reasons exclude entirely any responsibility of Dr. Becker-Freyseng as far as Haagen's work on typhus is concerned.

With regard to the criminal experiments in the field of epidemic jaundice, alleged by the Prosecution, I should like to refer to the fact that the Luftwaffe Medical Inspectorate did not even issue as much as a

research assignment here.

This means, from the very beginning, that there is no connection between Dr. Becker-Freyseng and those experiments in this field. The only research assignment mentioned in the trial was issued by the Reich Research Council.

Beyond this, the statement of the Prosecution's own witness, Edith Schmidt, proves that Professor Haagen in this sphere did not conduct any experiments on human beings at all.

The documents and the testimony by Dr. Haagen show, however, that it was planned to experiment on human beings. But the planning of such experiments does not constitute a crime. It is much more decisive on what kind of persons such experiment was to be conducted.

The Prosecution here asserted that it was Professor Haagen's intention to conduct experiments on prisoners, but it failed to prove this. On the other hand, the defense has proved, through Professor Haagen himself, that these transfer experiments were to be carried out with volunteers of the students' companies of the Luftwaffe. Such a scheme, however, constitutes no crime against humanity, but is strictly within the framework of what is admissible internationally. But, even with these legal plans, the defendant Dr. Becker-Freyseng had nothing whatsoever to do.

In summary, it may be said concerning this group of experiments that there exists no proof that any criminal experiments were carried out or that they were planned. Even more, we lack any proof to the effect that Dr. Becker-Freyseng had anything to do with these problems.

The most important charge against Dr. Becker-Freyseng is his participation in the sea-water experiments.

In this regard, the Prosecution did not claim that Dr. Becker-Freyseng actively participated in the experiments, but it called his sharing in their planning a criminal action that violates the laws of humanity.

The only thing that is true is that Dr. Becker-Freyseng, as referent for Aviation Medicine in the Office of the Chief of the Medical

Inspectorate of the Luftwaffe, in the course of his official duties, participated in the planning of the experiments that were carried out in the summer of 1944 at Dachau. The defense claims and has proved that these experiments did not violate those medical principles that are to be applied in medical experiments, neither in their planning nor in their actual performance. Actually, they were in accordance with those standards and norms in every respect.

The following must be said in this connection:

In general, the following demands are to be made in regard to medical experiments:

- 1) The experiments must be necessary in order to clarify the question at issue.
- 2) The experiment must be thoroughly prepared by study of literature, animal experiments, and self-experiments.
- 3) The experimental subjects must be volunteers.
- 4) During the experiment proper the rules of medical skill and medical care must be observed.

In the opinion of the defense, all these conditions were fulfilled in this case.

Since, however, Dr. Becker-Freyssing participated in the planning of these experiments only as was officially concerned with them in his capacity of Referent, I shall, in the following be able to touch only briefly on all matters pertaining to the actual execution of the experiments.

As a preliminary remark I should like to state the following:

I do not consider it my task to lecture again on this whole aspect in my final plea. On the contrary, I deliberately confine myself to clarifying those questions only, which are, in my opinion, decisive.

At the moment I consider, one factor above all, material. It is the following question:

Was everything done, when the seawater-experiments were being planned, to furnish all data required for establishing the necessity of the experiments?

And I think I can definitely answer this question in the affirmative.

The Defense has proved the high sense of responsibility applied to the inquiry on the necessity of the seawater-experiments. Scientists of international reputation, like Prof. Dr. Eppinger and Prof. Heubner, were consulted, and they definitely answered this question in the affirmative. More can not be expected or demanded in the way of a sense of

responsibility. In my opinion, the mere fact that these scientists were asked their opinion on the issue in question shows that everything was done on the part of the Chief of the Medical Service of the Luftwaffe and his office to reach the right decision in this question.

With regard to the purely objective judgment of the sea-water experiments and their necessity, I should like to refer to the statements made in my closing brief for Dr. Becker-Freysing.

At this point, I should, however, like to add the following:

The Prosecution has tried to make out that it was the purpose of these sea-water experiments to decide whether Berkatit removes the salt from sea-water. This contention of the Prosecution has in no way been proved. I must stress here again, most emphatically, that this was never the purpose of the sea water experiments.

All people concerned realized that Berkatit does not remove the salt from sea water. The question which was to be clarified and which necessitated the experiments was rather the following:

Under the action of the Vitamins contained in Berkatit, will the kidneys be capable of producing an urine with a higher sodium chloride concentration than is normally the case?

Dr. Hopfinger has answered this question neither in the affirmative nor in the negative; he stated that this question could be decided only by experiment.

In addition there was another question to be decided, as to whether in case of shipwreck it would be more recommendable to endure thirst, or whether marooned fliers should be advised to drink small quantities of salt water. In 1942 - 1944 this question was also raised in the US and England and there too, human experiments were carried out. But all these

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Individual questions were only part of the great issue, of how shipwrecked persons could be helped to escape the agony and danger of dying from thirst. These issues were the basis for the experiments conducted in 1944.

In my opinion it is not admissible, to-day to arbitrarily construe another issue, and to contend on the basis of such a never existing issue, that these experiments were not necessary.

These medical issues alone necessitated the experiments.

Other issues to which I want to make short reference, were added these.

Until 1944 the world lacked an agent to make seawater drinkable. Such an agent was an absolute necessity. Nobody denied even then, that BERKATIT, developed by the co-defendant Schaefer, would have been an ideal agent for this purpose. It was, however, equally clear that this agent could only be manufactured by withdrawing the necessary raw material, namely silver, from other war-essential uses.

Furthermore, it was not denied that Berkatit did not require in the same measure raw materials in short supply. Another circumstance to be considered, was that Berkatit could have been produced in existing plants, whereas it would have been necessary to erect new plants for the production of Mof-tit. Accordingly these technical reasons favored the introduction of Berkatit. It can hardly be denied that it was necessary for a medical officer conscious of his responsibilities in war, to consider these reasons when reaching a decision. Incidentally, the expert of the prosecution, Prof. Ivy, also stated that these reasons were absolutely worthy of consideration.

Accordingly it had to be clarified, whether Berkatit could not, after all, be introduced for distribution to persons facing the risk of shipwreck, and the inquiry into this question was all the more necessary is, according to the opinion of Prof. Spinger and Prof. Heubner, Berkatit

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apparently contained Vitamins which eliminated the risks incurred by human beings when drinking seawater. Whether the opinion of the experts, Heubner and Eppinger, was right or not, could, at that time the same as to-day, only be established by experiment.

Hence if the defendant Dr. Becker-Freyseng in 1944, having examined all these factors and having applied all precautions possible, became convinced that the experiments could not be avoided, and if, from this viewpoint, in his official capacity as a consultant (Referent) he reported to his highest authority at that time, Prof. Dr. Schroeder, that he considers the experiments as necessary, then, in my opinion, he can in no way be charged under criminal law on that account.

Therefore, in my opinion, it has to be proved that Dr. Becker-Freyseng considered these experiments necessary and that he was entitled to consider them as necessary.

And this question alone can be made the basis for an inquiry into his guilt under criminal law.

With regard to this point, I would like in conclusion to refer to the testimony of Prof. Dr. Volhard. This world-famous physician, this research-scientist, recognized as such in international circles, upon whom, only a few weeks ago, on the occasion of his 75th birthday, the highest German decoration of science was bestowed, namely the Goethe-medal for Art and Science, a ceremony in which nearly all European countries, also America, joined, stated before this High Tribunal and I quote:

"I regarded it as sign of a sense of responsibility that in view of the increasing flying-accidents, the sea-

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emergency-question was taken up and these experiments were launched."

Insofar, I consider the evidence established, that the planning of these experiments was in no way objectionable.

I need only point out briefly that Dr. Schäfer, on orders of the Medical Inspectorate of the Luftwaffe, carried out the necessary studies of literature, and that Dr. Schäfer carried out experiments on himself and on other persons, and animals, on a small scale, and that the same prerequisites had once more been given by the co-defendant Dr. Baiglböck who had been ordered with the execution of these experiments. Thus, also, in this case, a second prerequisite was given for the experiments on other subjects.

The next question to be decided by the High Tribunal is whether the experimental subjects were volunteers.

However, also in this case I should like to point out that the following may be decisive:

Dr. Becker-Freyseng, merely took part in the planning of these experiments. He neither selected the experimental subjects, nor did he ever see them.

It cannot be decisive for the judgment of a person's guilt, who, like Dr. Becker-Freyseng, merely took part in the planning of an experiment, whether the experimental subjects were, in fact, volunteers; it is much more decisive for such a person whether he wanted such experiments to be carried out on persons who volunteered. The evidence here also proved clearly in this direction, that Dr. Becker-Freyseng, together with the other physicians, only did think of volunteers. Beyond that, proof has been submitted that for this particular experiment, it was an absolute necessity, from medical reasons, for the experimental subjects to be

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volunteers. I believe that this Tribunal may well concede that for a scientist, with the fame as the defendant Dr. Becker-Freyseng had, this medical reason sufficed, that he requested the experimental persons to be volunteers.

Beyond that the evidence here has clarified unmistakably, that the experimental subjects were, in fact, volunteers.

Accordingly I consider the evidence established to the effect that the the planning of these experiments was in no way a crime against humanity.

Finally I must point out that the experiments in themselves were in no way a torture for the experimental subjects, and that the possibility of injury was out of the question, considering the directives given to the head of the experimental station, Prof. Dr. Beiglböck.

Then the expert, Prof. Ivy, who had been called by the prosecution, declared here, he had never heard that through a hunger or thirst-experiment an experimental subject had been permanently injured, or that such an experiment resulted in death, then this statement can be unrestrainedly accepted by the defense.

Dr. Becker-Freyseng also knew what Prof. Ivy stated here before the Tribunal. Therefore he had every right to regard these experiments as being not dangerous.

It is hardly necessary to detail the execution of the experiments themselves.

Dr. Becker-Freyseng did not take any part in the execution.

Concerning this point I should like to refer only to Prof. Dr. Volhard's testimony. He was asked whether he would carry out the sea-water experiment again, under the same conditions which were the basis of the experiments at Dachau.

He answered this question in the affirmative, and then he described an experiment on 5 of his associates amongst them his own youngest son.

No medical expert in the whole world would be able to give a more convincing justification for the planning of an irreproachable experiment.

"There cannot be any talk of inhumanity or brutality" that was the conclusive explanation of the 75 years old scientist, Prof. Dr. Volhard, concerning the question of the sea-water experiments.

Your Honors, in order to declare Dr. Becker-Freyseng's participation in the planning of the sea-water experiments a crime, it should be ascertained that Dr. Becker-Freyseng did not think these experiments necessary; it should further be ascertained, that he wanted these experiments to be carried out on persons who did not volunteer for them, and finally it should have to be ascertained, that these experiments were crimes against humanity. However, as the evidence has shown, it has not been proved that any of these assertions are correct. On the contrary I consider the evidence established that concerning this particular sea-water experiment, it was the question of a carefully planned experiment, carried out irreproachably and scientifically, and according to strict scientific rules, which lack all the characteristics of a crime against humanity.

However, in any case, the defendant Dr. Becker-Freyseng, like

every defendant, is here before the Tribunal under the protection of an assumed innocence, as the Military Tribunal II formulated it in the trial against the Field-Marshal Milch. As long as there is the slightest doubt in the guilt of a defendant, he has to be acquitted of the charge against him, according to the sound principle of the American legal idea:

"In dubio pro reo"

And when passing the judgment as to the guilt or innocence of the defendant, his personality must not be disregarded. However, I can hardly describe the personality of the defendant Dr. Becker-Freyseng better, than his hold lecturer and superior of many years did, the present Ordinarius for physiology and collaborator of the Medical Centre Heidelberg, Prof. Dr. Strughold. Summing up, I can say, that Becker-Freyseng is a highly intelligent scientist, trained according to superior principles, who by way of his scientific work, and in particular by his heroic self-experiments, accomplished great things for the progress of humanity in his youth, and who will fill his place, also in the future, as a physician, eager to help, and as a careful scientist".

Your Honors, please consider the defendant's personality, as well as the facts stated during the case, and you will come to the conclusion that in view of the evidence offered here, the motion of the defense is justified, which is, to acquit the defendant Dr. Becker-Freyseng of all the counts of the indictment charged against him.

THE PRESIDENT: The arguments on behalf of the prosecution and on behalf of the defense counsel have not been completed.

The Tribunal will be in recess until 9:30 o'clock tomorrow morning when the Tribunal will hear the personal statements by the defendants.

THE MARSHAL: The Tribunal will be in recess until 9:30 o'clock tomorrow morning.

(A recess was taken until 19 July, 1947, 0930 hours.)

Official Transcript of the American
Military Tribunal in the matter of
the United States of America against
Karl Brandt, et al, defendants, sitting
at Nuernberg, Germany on 19 July 1947,
0930 Justice Beals presiding.

THE MARSHALL: Persons in the court room will please
find their seats.

The Honorable, the judges of Military Tribunal I.

Military Tribunal I is now in session. God save the
United States of America and this honorable Tribunal. There
will be order in the court.

THE PRESIDENT: Mr. Marshall, will you ascertain if
the defendants are all present in court.

THE MARSHALL: May it please your Honor, all the
defendants are present in the court.

THE PRESIDENT: The Secretary General will note for
the record the presence of all the defendants in court.

This morning Tribunal No I has convened in order to
hear statements by the defendants in person. It is not
obligatory upon any defendant to make a statement if he
does not desire to do so. The privilege of making such a
personal statement is accorded to such of the defendants
as wish to avail themselves of that privilege. The defen-
dants sitting in the first row will make their statements,
those who desire to do so, from their places. The micro-
phones will be placed in front of each defendant. Any
defendant who does not desire to make any statement will
simply inform the tribunal of that fact when the microphone
is placed in position before him. The defendants in the
rear row, when their names are called, will step to the
entrance of the dock where the microphone will be in

position and will make their statements from that point. The defendants will speak rather slowly and distinctly in making their statements, so that it may be well and fairly interpreted. The Tribunal will now proceed to hear the personal statements on the part of the defendants. As I call the name of each defendant, he will proceed with his statement. Karl Brandt.

Defendant KARL BRANDT: There is a word which seems so simple, and that is the word order, and yet how atrocious are its implications, how immeasurable are the conflicts which hide behind the word. Both affected me, to obey and to give orders, and both are responsibility. I am a doctor and before my conscience there is this responsibility as the responsibility towards man and towards life. Quite soberly, the prosecution charged crimes and murder and they raised the question of my guilt. It would be without significance if friends and patients were to shield me and to speak well of me, saying I had helped and I had healed. There would be many examples for my actions during danger and my readiness to help.

But all that is now different. For my sake I shall not evade these charges. But there is the attempt of human justification which is my duty towards all who believe in me, who trust in me and who relied upon me as a man, as a doctor and as a superior.

I have never regarded the human experiments in whatever shape I might have meant it as a matter of course, not even when it was without danger. But I affirm it for the sake of reason that it is a necessity. I know that from these contradictions will arise. The things that disturb the conscience of a medical man, and I know the inner feeling that urges one when an order or when obedience decide the

world of any type.

It is immaterial for the experiment when this is done with or against the will of the person concerned. For the individual the event remains contradictory, just as contradictory as my notions as a doctor seem to be if you decide to isolate it. The sense is much deeper than that. Can I, as an individual, remove myself from the community? Can I be outside and without it? Could I, as a part of this community, evade it by saying I want to thrive in this community, but I don't want to bring any sacrifices for it, not bodily and not with my soul. I want to keep my conscience clear. Let them try how they can get along. And yet we, that community, are somehow identical.

Thus I must suffer of these controversies, bear the consequences, even if they remain incomprehensible. I must bear them as the fate of my life which allocates to me its tasks. The sense is the motive, devoted to the community. If for their sake I am guilty, then for their sake I will justify myself.

There was war. In war one's actions are all alike. Sacrifices of war affect us all and I stand by them. But are these sacrifices my crime? Did I kick the requirements of humanity and despise them? Did I step across human beings and their lives as if they were nothing? Yes, they will point at me and cry "Euthanasia" -- and wrongly; useless, incapable, without value. But what did happen? Did not Pastor Bodelschwingh in the middle of his work at Bethel last year say that I was an Idealist and not a criminal. How could he do such a thing? Here I am, subject of the most frightful charges. What if I had not only been a doctor but a man too without a heart and without a conscience. Would you believe that it was a

pleasure to me when I received the order to start Euthanasia? For 15 years I had labored at the sick-bed and every patient was to me like a brother, every sick child I worried about as if it had been my own. And then that hard fate hit me. Is that guilt?

Was it not my first thought to limit the scope of Euthanasia? Did I not, the moment I was included, try to find a limit and find a cure for the incurable? Were not the professors of the Universities there? Who could there be who was more qualified? But I do not want to speak of these questions and of their executions. I defend myself against the charge of inhuman conduct and base philosophy. In the face of these charges I fight for my right to humane treatment. I know how complicated this problem is. With the deepest devotion I have tortured myself again and again, but no philosophy and no other wisdom helped here.

There was the decree and on it there was my name. I do not say that I could have feigned sickness. I do not live this life of mine in order to evade fate if I meet it. And thus I affirmed Euthanasia. I realize the problem is as old as man, but it is not a crime against man nor against humanity. Here I cannot believe like a clergyman or think as a jurist. I am a doctor and I see the law of nature as being the law of reason. From that grew in my heart the love of men and it stands before my conscience. When I talked to Pastor Bedelschwingh, the only serious warning voice I ever met personally, it seemed at first as if our thoughts were far apart, but the longer we talked and the more we came into the open, the closer and the greater became our mutual understanding. At that time we weren't concerned with words. It was a struggle and a search for

beyond the human scope and sphere. When the old Pastor Bodalschwingh after many hours left me and we shook hands, he said as his last word, "that was the hardest struggle of my life." To him as well as to me that struggle remained, and it remained a problem too.

If I were to say to-day that I wished that this problem had never hit me in its tremendous dramatic force, then this could be nothing but superficiality in order to make it more comfortable for myself. But I live in my time and I experience that it is full of controversies everywhere. Somewhere we all must make a stand.

I am deeply conscious before myself that when I said "Yes" to Euthanasia I did that in my deepest conviction, just as it is my conviction today, that it was right. Death can mean relief. Death is life - just as much as birth. Never was it meant to be murder. I bear this burden but it is not the burden of crime. I bear this burden of mind, though, with a heavy heart as my responsibility. Before it, I survive and pass, and before my conscience, as a man and as a doctor.

THE PRESIDENT: I now call upon the Defendant Handloser.

DEFENDANT HANDLOSER: During my first interrogations here in Nuremberg in August, 1946, the interrogator explained to me:

First, you have been the Chief of the Army Medical Service. Whether or not you knew of improper experiments does not matter here. As the Chief, you are responsible for everything.

Second, do not try to come with the excuse that among other nations similar things, or the same, have happened. We are not concerned with that here. The Germans are under indictment, not the others.

Third, do not rely upon your witnesses. They, of course, will testify in your favor. We have our witnesses, and we rely upon them.

Those were the guiding principles of the Prosecution until the last day of these proceedings. They remained incomprehensible to me, because I always believed that a criminal had to be a man who did wrong, and because I was of the opinion that even the Prosecution had the desire to be objective, at least until after the end of the presentation of evidence. The final plea by the Prosecution, however, told me that I made a mistake. The speech by the Prosecution did not take into account the material submitted in evidence, but it was a summary and a repetition of one-sided statements of the Prosecution without taking into account that which was submitted in the course of the presentation of evidence in my case.

I have full confidence that the High Tribunal has gained a true impression of my activity and of my attitude. Just as I have tried throughout my entire life to fulfill the tasks which were put to me by fate, according to the best of my capacity and in the full knowledge of my responsibility, I also tried to pass this most serious examination before this court with the aid of this strongest weapon which I possessed. That is the truth.

If there was anything which could reconcile me with the mental suffering of the last months, then it was to be conscious, to know, that before this court, before the German people, and before the people of the world, it would become clear that the serious general charges of the Pros-

action against the Medical Corps of the German Armed Forces have been proved to be without any foundation.

It can be seen how unjust these charges were by the fact that, according to my knowledge, not against a single leading doctor of the German Armed Forces in combat or at home, including my two chiefs of staff, were any charges raised or any proceedings initiated. As the last Medical Inspector of the Army, and as Chief of the Medical Service of the Armed Forces of Germany, I think with pride of all the medical officers to whose untiring devotion hundreds of wounded and sick patients of this dreadful war owe their lives and cure and their possibilities for existence. Never and nowhere were the losses of an Army Medical Corps, more than those among the Army in the Officers of the German Armed Forces in carrying out their duties.

More than 150 years ago, the guiding principle was created for German military doctors and their young successors, "Scientia, Humanitati, Patriae", "For Science, for Humanity, and for the Fatherland." Just as the medical officers in their entirety also remained true. That guiding principle is in my thoughts and in my actions. May the joint endeavors of all the nations succeed in recognizing the meaning of peace, and to avoid in future the immeasurable misfortune of war, the dreadful phase of which, nobody knows better than the military physician.

THE PRESIDENT: The defendant Paul Rostock.

DEFENDANT ROSTOCK: I have nothing to add to the pertinent statements by my defense counsel, Dr. Pribilla, regarding the individual points of the indictment in this trial, but with regard to the general position of German Medical Science during this war, there are a few words, which I would like to speak from this dock.

Within my direct examination, I have already stated why I, as the Chief of the so-called Department "Science and Research," I undertook it to begin to work for medical science as late as 1943 and 1944. At that time the problem was to avoid the considerable and acute danger, or, at least to reduce that, that teaching and research, and with Germany's universities, should be completely destroyed. When this had been

prevented at the very last moment, there arose from it the task and the duty to improve the means and the possibilities of the basic research which had been more and more restricted in the process of the war and through their dwindling resources; research in Germany would have been completely destroyed. Due to the chaotic development of the last year of the war, success was comparatively limited, but there was success and there were a few things which were saved beyond the end of the war.

Today on the strength of the evidence in this trial, I know the reasons which paralyzed the work at the time. It was the striving for power on the part of certain organizations which used the effective support of certain executive departments who held the unrestricted power of the Third Reich. It was the claim for a totalitarian conduct which was put forward by its organizations in the case of what they called the science of universities, but it was there where we founded the tradition of German science recognized the world over. With regard to that they pursued the aim as shown in some of the testimonies given in this trial and some of the documents submitted for a politically directed science of their own, which they wished to start. That was the reason why in this trial, the evidence given to you in this trial, the aims which I have referred to had to be without a complete success. Today at the end of this trial I know how the situation was. At that time, in the year 1944, we did not know of this masterly camouflaged and, therefore, so very dangerous opponent of that part of science which I myself had come up against. Throughout my life I have never by any means worked for one form of a state or another or for any political party in Germany, but, solely and alone, for my patients and for medical science.

THE PRESIDENT: I now call upon the Defendant Schroeder.

DEFENDANT SCHROEDER: It is very difficult for a defendant to find the right last word here. In methodical, detailed work throughout the last months, the defense has tried to rebut the charges of the Prosecution.

If the Prosecution states now in its final plea that details do not matter so much but that the entire complex of questions has to be considered as a whole, one has to look at matters as at a bundle of sticks, not as individual branches and twigs of the bundle. If, furthermore, the Prosecution refers to a sentence pronounced in the Far East by an American Military Court, by which a Japanese General and military commander was sentenced only because, as a commander, he had the responsibility for all the acts of his troops, regardless of whether he ordered them, knew of them, approved of them, or did not even know of them--if, Gentlemen of the Tribunal, these principles are decisive for proceedings, then I have to ask, why bother at all to start proceedings of that kind, to prepare them, and to carry them out? Those decisions could be made much more quickly.

What can I, as a defendant, say against these arguments? That is easily seen by my work, my actions as a doctor and soldier in 35 years of service. Not ambition for glory and honor was the content of my life's work, but the firm intention to put my entire capacity, my full knowledge, into the service of my beloved Fatherland, to help the soldier, as a physician, to heal the wounded, which war-time and peace-time service has created, as a practical physician for the individual, as well as the medical officer for the mass of troops which were in my care.

That was the path and the goal of my work. I do not believe that I have deviated from that path. My eyes were always fixed in the direction of the final goal, to help and to heal.

THE PRESIDENT: The defendant Genken.

DEFENDANT GENZEN: During my testimony I stated before the Tribunal that I took no part in the types of experiments of which I was accused. I have nothing to add to what my defense counsel Dr. Merkel has said. For the duration of a human life I have striven to live decently,

as a doctor and as a soldier. If my fatherly concern for my 2,500 doctors and 30,000 medical men was attacked here in this courtroom, then it is nevertheless my duty to speak from this place on behalf of those men who, in the majority, were decent and brave doctors and medical men.

THE PRESIDENT: Please speak a little slower, the interpreters have difficulty in translating.

DEPENDANT GENZKEN: I am proud to have been their leader, a leader of those who sacrificed their lives and blood with unceasing effort to help me in building up the organization of the Medical Section of the Waffen SS, and who suffered tremendous losses from the ranks of our comrades at the fronts.

The soldiers of the Waffen SS have proven historically, in the focal points of uncounted battles during an uneven struggle, that they were able to meet the best equipped troops on this earth as far as training, efficiency, readiness of sacrifice, soldierly valor, and contempt of death were concerned. Actions of modern warfare presented a picture, partly, of murder and horror, and, I say, on either side. Who wants to raise his head before God and gain say it?

No, the men of the Waffen SS, went into captivity out of anguish, out of unheard physical and mental war distress. That captivity was not free of bloodshed, ill treatment and dishonor of various kinds. To the men of the Waffen SS there was added to the weight of such captivity the frightful realization of the fact that their supreme commander, Hitler, had misused their cloak of honor and deceived them, that they had been cheated and then deserted by him. These decent men of the Waffen SS certainly did not deserve that fate, the fate of being branded members of a criminal organization.

My request and my wish is that our former opponents should realize the true idealism of these victims, do justice to it, and give them back the true belief in justice.

THE PRESIDENT: The defendant Gebhardt.

DEPENDANT GEBHARDT: I wish to thank the High Tribunal for having granted me an opportunity, in the witness box, to describe my personal

position in 1942 in that much detail.

The historical situation at that time placed me in a totalitarian state which, in turn, placed itself between the individual and the universe. The virtues in the service of the state were virtues as such. Beyond that, I did not know whether, in the world neurosis of this total war, there was a country at all where the spirit was not used as a tool for war. Everywhere, in some way, values and solutions were put in the service of the war. And here again, in the spiritual field, the first step is the decisive one.

I may be permitted to recall that in the war of nerves, propaganda with and for medical preparations caused the first step, the order to examine the problem of sulfonilamides.

In my final statement today I want to describe my entire attitude as a whole. In doing so, may I utilize the most important of the four American freedoms, that is to say, the freedom of speech, until the very end, in a manner wherein I will refrain from any denunciation or from incriminating others. Without exaggerating the importance of my own person.

However, any physician can only be measured according to his idea of medical science. Basically, I was neither a cold technical specialist nor a pure scientist. I believe that I have always tried, for example, when carrying out surgical experiments, to see every disease as a purely human condition of suffering. However, I did not see my task as something to serve my own advantage, nor in cheap gestures of theoretical pity, but, in my personal active service, to support the wavering existence of the suffering patient. That is how I saw my task. My goal as a physician was not so much purely technical therapy for the individual patient, but therapeutical care for the particularly underprivileged group of the poor, the children, the cripples, the neurotics.

I am mainly interested in succeeding in being believed that it was not for moral baseness nor for selfish arrogance of the scientist that I came into contact with experiments on human beings. On the contrary, during the entire period in question I had animal experiments

carried out in my field of research. However, since I was the competent, responsible surgical expert, I was informed about the imminent experiments on human beings in my surgical fields ordered by the National authorities. After the order was given, it was no longer a question of stopping these experiments, but the problem was the method of their being carried out.

As an expert, my conflicts consisted of the following: For one, the experiments that had been ordered had to be of practical scientific value, and with the aim that a preventive should be found to protect thousands of injured and sick. On the other hand, I considered humane safety measures for the experimental subjects most important. The focal point for me, indeed, was never the purpose and the goal of the experiments, but the manner in which they were carried out. To do that in a humane way, I did not remain aloof in the special surgical field; I did not restrict myself to theoretical instruction, but I took part with my clinic and with all its safety measures.

DR. GERHARDT (Continued): I hope that this bears out the fact that in carrying out experiments I tried with the best of intentions to act primarily in the interest of the experimental subjects. We did not take advantage of the opportunity which was given us by Himmler without limitation. That is to say, surgical experiments were not followed by others. I believe that as far as that was possible at that period that I have fulfilled my duty as an expert purely because these experiments did not increase in the surgical field in spite of the crescendo of policy at that time. My desire was to help and not to give a bad example. In choosing this way of justification, of course, I have made a decision for myself. I hope that up to now I always stood up under criticism from the very beginning in foreign countries without any secrecy but also without the feeling of guilt for my activity as an expert.

That activity of experiments as a military physician, not on my initiative, brought me in contact with concentration camps I can understand. How heavy that deadly shadow must weight upon anyone who was ever active there. The ghostly phenomenon of that sphere, which at that time was unknown to me as well, can be recognized now in retrospect in full. We realize the terror in the secretly negative ideology of extermination combined there with the negative selection of the guards. Only from the files of the International Trial could we see that in the end of the 35,000 guard troops there were only 6,000 SS men unfit for combat. On the rest were scums, draftees, foreigners, etc., who to the greatest injustice and the greatest shame were given the same uniform that we wore in combat.

As chief of a well known clinic and supported by its known measures of safety devices, in the interest of the experimental subjects I got in touch, within the framework of my duty as an expert, with concentration camp doctors. As far as it was at all possible I tried to exclude that atmosphere in my field. But, I believe it can

be realized that my counter-actions went beyond purely clinical safety measures in the interest of the experimental subjects because of the several thousand foreign inmates of this concentration camp, among whom as we were told here there were at least seven hundred Polish women (only two hundred), but of these two hundred sixty of my experimental subjects, as was proved, at the end of the war were turned over to the Red Cross.

As much as I might try to clarify my notions as a doctor and to explain my good intentions and position there, here in the same manner my final thought should be devoted to self-criticism and to concentrate on my moral obligation.

In a parody on a statement by Heinrich Heine we may see today "It is fate in itself to have been an SS man regardless in what position". Though I believe and hope that I did my duty in this confusion which has been recognized later as being a most dreadful one - the confusion between the decent Wehrmacht-SS and the executive organization, that I have done my duty as an officer, a doctor, and a human being - I still feel highly responsible and I have my own restitution from this confusion - my possibilities to do that of course were limited.

Without looking for sensation I offered to undergo a self-experiment as proof, and that without any surgical safety measures, as soon as the first opportunity existed. My responsibility to all those who were my subordinates I have emphasized. I further have a responsibility, which I state not only now in the dim light of my own defense but already stated in May 1945 on that day when Hitler released us from our oath and from our orders and he himself left his post without any ethical reserve or ideological foundation. It was my endeavor to prevent any illegal continuation of the ideas of the SS, to take the burden off the shoulders of our faithful youth by turning over the SS Generals.

Today as one individual I can only repeat to my colleagues that readiness. Here, in spite of my serious endeavor, the charges seem to give a different impression. May the consequences effect me in such a way that I may ease the problem to the younger ones who, believing in me, also joined the SS as surgeons. I believe that this pile of rubble of Germany can not afford to let these good young doctors perish in camps or in inactivity. Likewise I understand I have measures which should make the work easier for the old German universities and their admired teachers.

If you permit me a last sentence without referring to my own person, in order to summarize what I have found out in order to avoid possible mistakes, I would like to say, that from basic social conditions the only pathological escape at that time, as well as today, would be here as well as everywhere, to confuse and combine the spiritual with the economic and political concepts. It is a disastrous error to confuse the organized unanimity of voices with harmony. Destructive criticism educates people only to be capable of cooperation. The private as well as the public conscience can not be subjugated to any official virtue nor to any temporal moral principles. That can only find its place within a God-given order. Thus, in the sense of a constructive pessimism, as I have set forth before, this war, in this sense we alone find consideration for the reality, full of suffering, of this social catastrophe.

My last statement of gratitude is to go to Dr. Seidl who in this time which lacks of civil courage, has been our assistant as well as for my colleagues as well as for myself.

THE PRESIDENT: Defendant Blome.

DEFENDANT BLOME: I have testified quite openly before this high tribunal that, particularly up to the outbreak of war, I was a confirmed National Socialist and follower. I have also stated why I became a party member in 1931, because political conditions in Germany at the time were moving with giant strides towards a final conflict between Communism and National Socialism, as a result of the economic chaos and the impotence of the German governments after 1919. I have said that I joined the National Socialist Party because I rejected the dictatorial form of the Communist system. In my book "The Doctor in the Struggle", which was put to me by the Prosecution here in cross-examination, I also explained why I went over to National Socialism. This book, however, which was published in 1941, at the time of Germany's greatest victories, clearly shows my repudiation of the Second World War, to which I do not refer with a single word, not even a hint, although my experience in the First World War take up considerable space in that book.

After the First World War Germany was in great difficulties. The situation became progressively worse and more unbearable, when at the turn of the thirties the economic crisis spread throughout the world and even seized hold of the United States. At that time I realized that in such hard times a nation which is drifting toward despair seeks a leader and follows him in blind confidence as soon as he can show big successes.

That is the case of Hitler these were only sham successes or temporary successes the German people realized only gradually, only step by step, and only at a time when it was too late to shake off the dictatorship again by their own strength. For years the German people were deceived by the leaders as to the true situation. In deliberately lying propaganda Hitler's governmental system until the last moment kept proclaiming final victory to the German people, even in the winter of 1944, and even in the spring of 1945, when the Reich cabinet and the

Party Leaders long knew what a terrible collapse was imminent. This governmental system thus irresponsibly imposed on the exhausted body of the German nation still further useless losses of life and property.

Since the collapse, particularly since the International War Crimes Trial at Nurnberg, we see clearly that this frivolous method of betrayal of their own people was an appropriate part of the systematic murder of foreign peoples and races by the millions.

I believe that there is no example in history of the boundless confidence of a people in their leader being so boundlessly misused and disappointed.

The German people were blinded in their faith in their Fuehrer, in a leader who constantly pretended to them and the world a love of peace, a humane character, a selfless care for the people. Thus the German people became the victim of a political gumbler. His unrestrained supreme power apparently knew only the choice between ruling and destroying. Hitler's ambition, as I know and judge it today, had only one aim: at any price to go down in history as a great man. Hitler achieved this goal 100 percent: He went down in history as one of the greatest tyrants of all time, tremendous in his mania for ruling, tremendous in his brutality in the achievement of his ends, not hesitating even at the murder of his best friends, his oldest followers, if they were in his way.

Relying upon the blind confidence of his deceived people, Hitler created a system in which all individualism, all sentiment of freedom, all personal opinion of the citizens was clipped in the bud and turned into slavery.

He succeeded in this with the aid of a very small circle of closest associates, who had fallen under his hypnotic influence, in part perhaps deceived themselves by this man, but who became willing tools in his hand for the enslavement of the German people and the domination of whole nations.

Under the fatal influence of a clever, deliberately lying propaganda, against which even other countries were as good as powerless, the German people and the German doctor, too, believed that they were following an honorable leader and serving a good cause; they all considered it the highest moral duty not to desert the Fatherland in times of emergency and particularly in wartime, especially since this was their duty to the very extreme, since in this war the life or death of the nation was at issue.

During the times of total warfare, the times of air raids, hunger, and the danger of epidemics, working conditions for the German doctor were terribly hard; so difficult that today one can hardly imagine how what German doctors accomplished in those days for friend and foe alike. Whether we twenty doctors here in this dock are accused justly or unjustly, it is a great injustice in any case to defame German doctors in general in public, as is constantly being done. As former Deputy Reich Physicians' Leader I know conditions in the German medical profession during the Hitler period, and I must say even today: In its totality the German medical profession was efficient, decent, industrious, and humane. Their willingness to work under the most difficult conditions that one can imagine, their unselfishness to the utmost, their courage and their helpfulness were exemplary. Beyond all praise were in particular the numerous old doctors who were already living in retirement and who, in spite of their great age, returned to the service of the sick, and those innumerable women doctors who, married and often the mothers of many children, exchanged their household duties for the difficult work of medical practice during wartime. The whole German people know this, in whose midst and under whose eyes the German medical professions spent the years of distress and fright, and who, therefore, will continue to place unlimited confidence in German doctors.

Of myself I can say: I have always, particularly during the Hitler

period, devoted all my efforts to keeping the medical profession at a high scientific and ethical level and to developing it. And I found in this effort the full support of all German doctors, including the most famous scientists and chief physicians of medical institutions. Well-known scholars throughout the world supported this work, which was above parties and enjoyed an international reputation.

But in the course of this trial it has become clearer to me day by day just how criminal the Hitler system was, to which I sacrificed in good faith many years of my life, and I am deeply moved inside me that I must confess to myself: For years I held a responsible position in a system which to say I must curse just as much as curse all those who forced upon the German people such a tyranny of crime and debasement of men.

It was my mistake that I stayed in the post where fate had placed me and in which I had hoped to be able to do good for our people and my profession. It would often have been simpler to give up this post, when I began to realize, step by step, the depravity of the Third Reich. If I did not do so, but stayed at my post until the bitter end, I did this because I considered it my duty, especially in the hard times of total war, and because again and again I succeeded either in protecting the medical profession from harm or in preventing crimes against humanity. Even today I would have to consider it cowardice if I had left my post in 1941 or '42 only to put myself in safety or to evade threatened responsibility.

I feel myself free of the guilt of ever having committed or furthered crimes against humanity.

THE PRESIDENT: The Defendant Hrugowsky.

DEFENDANT MRUGOWSKY: My attorney and I have made every effort during my examination on the witness stand and by means of the considerable evidence which we have submitted to restrict the charges which have been raised against me, just as much as we tried to assist in ascertain-

ing the truth.

The outcome of the trial and the evidence against me is in the hands of the Tribunal and its closing brief, and in the reply the brief of the Prosecution. I am firmly confident on the basis of this trial that this high Tribunal will examine the evidence objectively and carefully. Thus in my final speech I merely would like to draw your attention to the fact that my life in its entirety was solely devoted to my profession and my science. It was my aim, not by any means to represent some political ideology, but to go to the university and to reach the position of a free and independent doctor and scientist.

The Prosecution has charged us, the defendants, with destructive tendencies which were supposed to have been the causes of our actions. I declare myself and know that I am free of such tendencies. They never occurred to my collaborators and myself at any time. In the Waffen-SS too, the troops of which were among the bravest divisions of the German armed forces, such tendencies never played a part.

As far as my own concepts of the ethical duties of the doctor are concerned, they are contained in a book regarding medical ethics, and I believe always to have acted according to the principles of that book and lived according to them. My life, my actions and my aims were clean. That is why now that at the end of this trial I can declare myself free of personal guilt.

THE PRESIDENT: The Tribunal will now be in recess.

(A recess was taken.)

THE MARSHAL: Persons in the courtroom will please find their seats.

The Tribunal is again in session.

THE PRESIDENT: The defendant Rudolf Brandt.

DEFENDANT RUDOLF BRANDT: Now, after this trial has reached its final stage, my conscience is confronted with the question of whether I consider myself guilty or innocent. My responsibility, in my opinion, is to be tested by a three-fold question.

First, did I participate in the experiments directly and actively?

Second, did I at least have any knowledge of the criminal character of the experiments on human beings?

Third, what, if I had known, should have been my attitude towards Himmler?

What my basic opinion is of crimes against humanity I did not only declare myself on the witness stand but this has also been testified to by a very competent foreign witness, a Swedish medical counsellor, Felix Koersten.

Before this Tribunal and in the full knowledge of what I say I confess that I abhor - and did abhor - any crime against humanity in the years past and during my activity as a so-called personal referent of Himmler. But I also frankly declare that perhaps during the course of these last years my way of thinking was not always as present in my conscious mind as it is today. But I never participated in a crime against humanity knowingly, intentionally, or with premeditation.

When passing on the letters, orders, etc. which Himmler issued to third persons, and the result of which was the commission of cruelties on human beings, I am confident that from the evidence and from the content of the various defense affidavits the Tribunal will be convinced that that also corresponds to the truth, that my real sphere of power did in no way correspond to the face value of my official position. My real sphere of power was extremely small. It did not exceed that of a well-paid stenographer in the office of an influential man in Germany. If the Tribunal were to start from this fact, it would approach reality

much closer than the prosecution did in its indictment.

I got into contact with Himmler when I was a young, immature man who came from a family in modest circumstances. Nothing else but my ability as a stenographer, which I had obtained through my industry, was the reason for that, and this was my position until the last days of the German collapse, in spite of promotions in rank. At that time I was only too glad to get that job because it enabled me to support my parents with money.

When I started work with Himmler, I got, without intermediate stages, into an agency, the chief of which was to combine, among other functions, the highest executive powers in his hands a short time afterwards.

I am convinced that I would not sit here under a grave indictment if I had had the opportunity to continue my education, if I had made a start in a subordinate agency, and had risen little by little into a higher position. Unfortunately, I have always been a lone wolf as long as I lived, and I never was fortunate enough to have an older friend who could have corrected my political inexperience and my gullibility.

If, however, through all those years, I represented Himmler's ideology, I did so only because I did not know the criminal part of Himmler's character. Since I lived, so to speak, divorced from the world around me and was only devoted to my more than plentiful work, I only learned after the collapse what stupendous crimes are to be booked on Himmler's account.

The evidence has shown that I neither knew a concentration camp nor had anything to do with concentration camps in my official capacity; nor had any influence on the system of the concentration camps, their administration and management, nor on the treatment of prisoners. For this reason I didn't know the measure of the tragedies which were enacted there.

Those matters, into which I had sufficient insight during my restless daily activities to permit me to distinguish between good and evil,

were on a plane where they need not shun the light of sun.

I do not deny that some of the documents submitted here by the prosecution went through my hands, but I do deny - and I pray the Tribunal may believe me - that I knew the contents of the documents, particularly the reports and therefore the essential core of the human experiments.

I know that appearances are against me. Only these external appearances led the prosecution to indict me in this trial and to pass their comment on me during their closing speech, without penetrating to the bottom of matters. This way they arrived at a completely wrong appraisal which does not correspond to the facts and overrates my position and my activities.

These appearances which speak against me will be dispelled as soon as my real position will be considered in which I found myself as so-called personal referent of Hitler for many years. On the witness stand I testified to the truth, which has been confirmed by witnesses who knew the real facts from their own experience.

It does not run counter experience that among thousands of incoming and outgoing items of mail - that is, hundrede of thousands during the course of the years - there should be an insignificantly small number of documents which a personal referent passes on to third persons without knowing their contents more closely. The more so if they concern matters which have nothing to do with the normal duties of the personal referent.

I believe that an American tribunal will know how to appraise the foregoing, though I am rather afraid that the situation as it existed in Germany during the years before the collapse and prevailed in high government agencies will never really be brought home to American judges.

Therefore, I deny to myself to discuss again my position at that time and the ignorance of criminal experiments on human beings which was the consequence thereof. In this respect I agree with my defense counsel. Neither need I fear Professor Ivy's statement who declared that even a layman must be outraged by reading the reports of Rascher, because the

fact that the layman has read the passages of the reports wherefrom the obvious violation of human dignity is evident was, as a matter of fact, the natural prerequisite for Professor Ivy's opinion, and that prerequisite did not exist in my case.

In accordance with the truth I repeat what I have said in the witness stand, that I had a general knowledge of experiments on human beings. I can no longer say when and on what particular opportunity I gained that knowledge. But this fact alone does not deserve death, because I never had the feeling that I had participated in such crimes by my activity in the Personal Referat.

Such a knowing participation demands that the personal referent knows the contents and the import of Himmler's letters, orders, etc. and passes them on in spite of his knowledge of the contents and their import. I just said that appearances are against me, but I believe I did prove that I did not possess that knowledge. I pray the Tribunal to follow the line of this evidence and, I think, this is not asking too much since the experience of everyday life speaks in my favor.

The various affidavits which I have submitted and which were the subject of excited argument have found their explanation. In some points I have learned and I have tried to correct my mistakes. I did not want to speak an untruth knowingly which might be detrimental or favorable to a third person. I ask the Tribunal not to forget that I was in a very low general condition when I signed these affidavits. Only a few months previously I weighed only forty-four kilograms; consequently my mental power was reduced to a minimum.

During my activities which stretched over many years I exclusively acted on the express orders of Himmler without ever making a decision on my own initiative. I may take it that this fact has fully been proved.

The question what attitude I should have assumed had I known the details of inhuman experiments I can only answer in a hypothetical way. Had I had only a rough knowledge, as I have it today, I would have resisted to pass on such an order by virtue of my general view on questions

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of humanity.

Since, however, I did not have that knowledge it could not come to my resistance on my part. I asked to take into consideration that during all those years, I regarded matters which were in my field from my own point of view, and tried to live up to my own ideals. I saw my duty in carrying out my task faithfully and in the conduct of a clean, personal life.

I also intended to make sure that I would not cause any damage to any human being, but to try to understand the situation of a person in need of help, and then to help in a manner as I would have wished to be helped or treated if I was in his position.

I would remind you of the statement of the witness Meiner, on page 4919 of the German translation of the 21 March 1947, about the fact that my signatures are on the documents which have been submitted by the prosecution. That fact has moved me deeply because my entire view of humanity and the principles of humanity is quite opposed to that. What I understand by humanity, also applies and begins to apply to the details of life.

In spite of my good intentions, and that I say in answer to a question put in the beginning - in spite of my good intentions I was drawn into a guilt - I see it as a guilt, into which human beings can be involved by tragic circumstances without any intention on their part, but to recognize this guilt was sufficient to upset me deeply.

THE PRESIDENT: The defendant Poppendick.

DEFENDANT POPPENDICK: I joined the SS at a time not to commit crimes, but the reason was that a number of individuals whom I knew to be idealists among my friends were members of the SS. Their membership caused me to join. That I thereby became a member of a criminal organization was unimaginable for me at that time, just as it is incomprehensible for me today. My activity in the Rasse und Siedlungs Amt (race and resettlement office) was devoted to the

problem of the family, an activity which in view of the destructive tendencies during the period of the first World War seemed important to me.

If my expectations as a physician were disappointed in more than one point, at least I considered myself justified to hope that in the end this activity would have positive results. The intentions were always toward a constructive policy for the good of the family. Never did I have anything to do with negative population policies, not even outside of policies of a legal nature, as the sterilization program of the State.

The assertion of the prosecution that positive and negative population policies belong in the same chapter, just as the two different sides and possibilities of one program, is erroneous. Then there were purely organizational reasons which brought about my direct subordination under the office of that man whose name today has such an inhuman sound - I mean Grawitz.

The impression which the prosecution has rendered of my activity and position in Grawitz' office is not in accordance with the facts, in spite of some features which seem to support the assertion made by the prosecution.

As for medical experiments on inmates - experiments on human beings were nothing surprising to me, nor anything new. I knew that experiments were carried on in clinics. I knew that the modern achievements of medical science had not been brought about without sacrifices.

However, I do not recall that the fact of voluntary experimental subjects had to be an absolute requirement, as it seems to be considered as a matter of fact, according to the discussions in this trial. I knew furthermore, that some scientific problems can only be solved by experiments in series with conditions remaining constant, and that therefore soldiers and particularly soldiers in camps are

used for experiments in all countries.

Under these circumstances it did not appear surprising to me that during the war scientists also carried out experiments in series in concentration camps. I did not have the least cause to assume that these scientists in the camps would go beyond the scope of that which otherwise everywhere in the world of science was customary.

What I knew about medical experiments in the SS was, in my opinion, not at all connected with criminal matters, not any more than those experiments about which I knew from my clinical experience before 1933.

In March of this year a young doctor, Dr. Mitchell, in a very one-sided way, published a book containing the indictment, "The Dictates of Contempt for Human Life". The problem found in this book, is the basis for an opinion, of course, and the basis for a verdict seemed to be quite clearly offered.

During the very last days, however, the Chief of Dr. Mitchell, a well-known Professor from Heidelberg, Weizsaecker, published a study on the principle questions belonging to the subject under the title "Euthanasia and Experiments on Human Beings", which he had submitted to the defendants. But here now we find an entirely different language. The problem itself becomes obvious. If one reads this booklet then the extent of that entire problem can be seen, and its complicated features.

The oath of Hypocrates, according to Weizsaecker, has nothing to do with the problem. Weizsaecker applies entirely different ethical norms. Rightly the spirit of medicine of Germany, or of Germany under Hitler. It is found, therefore, that experts who consider themselves competent even today, are right in the middle of their endeavor to clarify the problems at the basis, that being the first requirement for their solution.

Before this trial all of these matters were no problems for me. I did not know of any transgressions. Moreover, I was always convinced

that anything which came to my knowledge about experiments on human beings in clinics of the state before 1933, and within the scope of the SS in later years, were conscientious efforts of serious scientists to the good of mankind.

The ethical foundation of these matters also seemed to be there until this trial. Therefore, after sincere examination of my conscience, I cannot find any feeling of guilt and expect with a clear conscience, the verdict of the Tribunal.

THE PRESIDENT: The defendant Sievers.

DR. SIEVERS: Your Honors, in his opening plea, my defense counsel already stated quite openly and frankly that all events were going to be presented with which I was in any way connected, and in this hour which is so important to me, I can state to the best of my conscience that when I furnished my defense counsel with information, and during my own examination on the witness stand, I always spoke the full truth. I have, in fact, had the satisfaction to see that my testimony was confirmed by a witness for the prosecution. During my examination as a witness on the stand, I said quite truthfully that the experimental subjects to whom I had talked in connection with the last experiment in Hatzweiler had confirmed to me that they were voluntary subjects.

Witness Falles, witness for the prosecution, confirmed my testimony during his examination on the 30th of June in this courtroom, record page 10593.

With regard to the charge of participation in the malaria experiments, I have stated that I had nothing to do with malaria experiments.

Witness Vieweg called by the prosecution, confirmed this testimony of mine. Likewise witness Stoehr, pages 495 and 638 of the record.

I testified that the two experimented subjects whom I met in connection with the altitude experiments, in reply to a question

of me, confirmed specifically that they had volunteered.

Witness Neff of the prosecution confirms this voluntary status of the witnesses, page 657 of the record. Likewise Dr. Rosenberg during his direct examination stated on the strength of his own knowledge that my testimony was correct.

The only experimental subject whom I met in connection with the typhus experiments answered my definite question regarding the voluntary act of the witness that this was so. The testimony of myself was confirmed through the affidavit of a former prisoner, a witness Grunzenhuber contained in my second document book.

The prosecution says that they charged me with having placed myself at the disposal of IMT on the behalf of the SS. This was rather a peculiar statement considering my own defense in this trial. I said when I was on the stand that without my own initiative, in fact against my own will the defense counsel for the S^o called me in order to use me as a witness.

Attorney Pelckmann, then defense counsel of the SS has confirmed the correctness of the statements of mine in an affidavit. According to that, I immediately informed Pelckmann at the time in writing regarding my former membership of the resistance movement against the national socialist regime and told him I was not a suitable witness. At the same time I had also a copy of my letter, in which I placed myself at the disposal of the International Military Tribunal through ISD as early as the 20th of December, 1945, as the record shows. INT shows on page 14929.

I have stated my regrets on this same witness stand that my preparedness to aid justice and to help in prosecuting past crimes was not accepted and that considerable evidence was thus destroyed.

As early as August last year, I furnished the prosecution with a report about my activities in the resistance movement, indicating again my willingness. This was passed over, however, when I stated that I was not prepared to sign affidavits which were not completely true.

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I openly and frankly stated at that point that I lacked the understanding for this action. I had to do this, and I could do it because I had been looking for truth and right at the risk of my life, undaunted, and even during the time of tyranny. Was one now to be a collaborator in methods which I thought had passed with the National Socialist Regime? And which, as remains my firm conviction, would never lead to a true pacification of this world such as we all desire. I am mentioning this with regret and only because I have always claimed that I myself, and my statements, during responsible times, deserve to be believed. The Prosecution did not only feel in a position to doubt my credibility, but they even consented to call me a liar during their argument, again-- at their better knowledge and their better conscience. Consequently, I had to draw your attention to the testimony of various witnesses which confirmed, in full, my testimony on the stand in such complicated matters. I can truly be satisfied that it was not up to me, but to the Prosecution witnesses, to contradict the incorrect statements made against me. History will honor such action, and judge the persistent attempt to stick to pre-conceived ideas. There is no blessing connected with it. I'm only sorry for those who are misguided by false ideas. My firm conviction that this high Tribunal will fully believe my testimony during my examination is based on these facts. In this connection, with reference to the experiences which I have just described, I am forced to say that on the other hand it was quite inspiring confidence to see which wisdom and patience inspired my judges. This Tribunal stood above matters and disclosed a conduct of trial in which one could feel sheltered; all my friends, who fought in the secret resistance movement with me and attended this trial repeatedly in the audience, share with me the sentiments. I have explained to you, Your Honors, for what reasons I was in immediate, direct contact with the NSDAP and the SS. I have told you how I always tried to prevent the application of medical research to the Annaeherbe. This attempt failed,

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due to the ambitious attitude of Himmler. Only on the strength of my own feelings had I to find an attitude with regard to this new question of experiments on human beings. I did not approve of them, and I attempted to take the consequence, which could only be that I immediately resigned from my post as the Reich Manager of the Annenerbe. I think the testimony of the Witness Hilscher, in this stand, and the affidavits from Witness Deutelmoser, Witness Dellmann, Witness Schmitt, and others prove beyond doubt that I had the true intention of resigning from the Annenerbe. And these witnesses have also clearly testified why I didn't do so, not because of personal ambition, not for reasons of comfort, or for what other low reasons might be attributed to me in this point. It was due to the persistent urging on the part of my political friends that I remained, in order to serve the task I have fought for. It had taken me to the NSDAP and the SS, but I refused to be a follower of the NSDAP and the policies which they represented. On the outside I had to live up to the name of a National Socialist, if I was to hold up the political ideal to which I had devoted myself since 1929 and not to endanger it. In his affidavit, and it is in my appendix to my document No. 1, Witness Niebhausen, who was the most important member in the circle of the secret German resistance, and who has acted on behalf of Dr. Kampner too, and who is obviously a personality beyond reproach, says that his illegal activity which continued for five years would have been quite impossible without my assistance. I do, in deed, not know what the Prosecution is prepared to recognize as being the fight against the Nazi Regime. Even such activities as these cannot be eliminated as a fact. It is not necessary to read all the details which have been testified to in this Courtroom. That in true recognition of the consequences which might be daily expected for myself and my family I devoted myself to resistance, continued in it undaunted, and never abandoned it, is now the only reason why I find myself in this dock. For that reason, I look forward to the judgment of this Tribunal

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with confidence, due to my conviction that I have lived for a good cause and acted on it, on behalf of something which at the time, as a matter of fact today, filled me with true belief.

THE PRESIDENT: The Defendant Rose.

DEFENDANT ROSE: Mr. President, may it please the Tribunal, the scientists who are among the defendants in this trial are confronted with a principal difficulty, the fact that purely scientific questions have been made political, ideological questions by the Prosecution. In the opening speech by the Chief of Counsel, General Taylor, the political and ideological nature of the indictment has been expressed as clearly as possible. Subject of the personal charges against myself is my attitude toward experiments on human beings ordered by the State and carried out by other German scientists in the field of typhus and malaria. Works of that nature have nothing to do with politics or with ideology, but they serve the good of humanity, and the same necessities can be seen independently of any political ideology everywhere where the same dangers of epidemics have to be combated. Just as in the case of malaria experiments malaria research has to make experiments with human beings, in the same way malaria scientists of various nations had to carry out experiments on human beings. Just as Klaus Schilling, with his own initiative, but with the approval of competent authorities of the State, was compelled to undertake human experiments, before and after his malaria researchers of various nationalities were compelled to make human experiments. Just as Haxson, out of his own initiative and with the approval of the competent State authorities, tested the value of a new, living typhus vaccine, before him that was done in the course of fighting plague by this great co-patriot, Richard B. Strong, when he experimented on natives of the Philippines, who were not American citizens, and when he did so with the approval of your Government. Just as Dr. Ding, on the instruction of the highest and decisive authorities of the German civilian health administration, tested the value of the typhus vaccine on humans in times of greatest

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typhus danger. Others have done so before him in less pressing emergencies, in part upon the instruction of their governments. From the witness stand I testified about the actual role which I played in regard to the charges of human experiments with malaria and typhus. And I have explained from the witness stand the legal evaluation of my actions, and they have been submitted to you by my Defense Counsel Dr. Fritz. I need not add anything to it. But my attitude towards the experiments on human beings in medical research, as a matter of principle, I stated probably not only in this Courtroom, but also when the National Socialist German Government was at the height of its limitless power. At that time I was cut short by a man, Professor Schreiber, who about a year ago in this very Courtroom, claimed to be a defender of medical ethics. The fact is undoubted that human experiments, which were exactly the same as those, the participation in which I am unjustly charged with, have been carried out in other countries, above all, in the United States which has indicted me. That has led the Prosecution to place to proper point of its charges upon the outside conditions of the persons put at the disposal for experiments. In that connection the question of fact whether they were voluntary was put in the foreground. I shall not discuss the question as to what extent the doctor who is charged with the experiments is responsible for these external, formal questions, at least a doctor who was so far removed from the experiments themselves as I was. But in connection with the principal question of subjects' being volunteers, I have to make a few statements. A trial of this kind presents probably the most unsuitable atmosphere to discuss questions of medical ethics. But since these questions have been raised here, they have to be answered. Everyone who, as a scientist, has an insight into the history of the dangerous medical experiments, knows with certainty the following fact. Aside from the self-experiments of doctors, which represent a very small minority of such experiments, the extent to which subjects are volunteers is often deceptive. At the

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very best they amount to self-deceit on the part of the physician who conducts the experiment, but very frequently to a mis-leading of the public. In the majority of such cases, if we ethically examine facts, we find an exploitation of the ignorance, of the economic distress or another emergency on the part of experimental subjects. I may only refer to the example which was presented to the Tribunal by Mr. Ivy when he presented the forms for American malaria experiments.

You yourselves, gentlemen of the Tribunal, are in a position to examine whether, on the basis of the information contained in these foras, individuals of an average education of an inmate of a prison can form a sufficiently clear opinion of the risks of an experiment made with pernicious malaria. These facts will be confirmed by any sincere and decent scientist in a personal conversation, though he would not like to make such a statement in public. That I myself am, on principle, an opponent of the idea of dangerous experiments on human beings is known to you gentlemen of the Tribunal and proved by others than myself.

The state, however, or any human community which, in the interest of the well being of the entire community, did not want to forego the experiments on human beings, does only base itself on ethical principles as long as it assumes the full responsibility which arises therefrom.

And if it imposes sacrifices on enemies of society to atone for their crimes and does not cover behind the method of a make believe principle of voluntary submission which imposes the risk of the experiment on the experimental subjects who are not in a position to foresee the consequences.

The prosecutor in his plea criticized the submission of affidavits during the presentation of evidence on the part of the defense. The difficulties which exist for a defendant in prison in Germany of today to acquire other documents are almost prohibitive. In order to give an example, when the malaria experiments of Schilling's were discussed, the prosecution, among other material, submitted to the Tribunal an excerpt from the well known Dachau sentence; concerning the facts stated — the statements contained therein about the number of victims in these experiments, I have stated here in the witness box that I rather sit there as a defendant than to put my signature on the opinion which would confirm these statements. How right I was in making that statement can be seen from a letter by Professor Allanby of the University of London which, unfortunately, has been received only now by my defense counsel, in

which he termed the statement that 300 experimental subjects had died, a grotesque untruth.

My defense counsel in his final plea has quoted the passage of that letter. The prosecution at that time when the excerpt of the Dachau sentence was submitted, promised that the entire files of the Dachau trial would be put at our disposal. Unfortunately, all my efforts to gain an insight in these files until this moment have been in vain.

When Under-Secretary Conti during the war was toying with the idea to commission Professor Schilling, who was at that time in Italy, with malaria research in German, I, at that time, Chief of the Tropical Medical Institute, Department of the Robert Koch Institute, was assigned by the Reich Ministry of the Interior at first to give an opinion. In this opinion, for reasons which I have explained in the witness box, I rejected Schilling's plan. Had one followed my advice, the experiments by Schilling in Dachau would never have taken place. In the course of these proceedings I made all efforts to come into the possession of that opinion but in this case also I was unsuccessful, although that opinion in two copies is in the hands of the military Government, possibly even in this building.

Also, in vain, I attempted to get the file note, so important for my defense, which I dictated to the witness Brock about my conferences with Under-Secretary Conti and President Gildemeister, after I had gained knowledge about the conduct of the typhus experiments in Buchenwald, whose little correspondence I had with Professor Hagen is apparently entirely in the hands of the prosecution. In spite of that, it has been submitted only in part to you. That fact offered an opportunity to the prosecution to interpret passages taken out of the context incorrectly. Unfortunately, I have no opportunity to force anyone to submit the missing documents which would clarify matters in my favor.

To evaluate the work of Hagen, and my defense counsel has pointed that out already, the statement of an unbiased expert would have been of

decisive importance. Therefore, I can only regret that the interrogation of the Frenchman Georges Blanc, which I suggested and who has the best knowledge in this field, did not take place, although he had volunteered to appear before this Tribunal as an expert.

Professor Lecroux, Director of the Institute Pasteur in Paris, during this trial was frequently in Nurnberg. After an interview, the prosecution refrained from calling him as an expert witness to clarify some difficult questions resulting from the work of Haagen. I ask the High Tribunal to draw its conclusions from these facts and to assure that the lack of these pieces of evidence, which I cannot effect, should not result in a damage to my interests.

Prosecutor McHarney has explained in his plea that one still had to find that doctor among the defendants who would have subjected himself to such experiments as are covered by the indictment here. I do not feel that that concerns me, not only from the statement which I have made here before you but also from my case history which was available to the authorities of the prison before I was submitted to that indictment.

It can be seen that not only as an experimental subject I put myself at the disposal of experiments to evaluate vaccines but that frequently I gave myself infectious injections with cholera, typhus, malaria and hepatitis epidemica and that, in part, I am still suffering from the consequences.

Finally, the Prosecutor McHarney has asserted in his plea that all of those implicated here are guilty of murder, and that includes me too. If the Tribunal was to look at the problem at hand from this point of view, I would regret to have said a single word in my defense. However, if you believe me that in all actions of mine which have been discussed here, I was only moved by sincere devotion to duty, then I put my fate with confidence into your hands.

THE PRESIDENT: The defendant Ruff.

DR. RUFF: As far as the written and oral statements of my defense

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counsel are concerned which deal with the points of indictment and as far as my activities as a doctor and scientist is concerned, I have nothing or hardly anything to add. I can only repeat today what I said at the end of my examination when I was on the stand. After detailed inquiry into my conscience, I still today hold the belief that I never sinned against my duty as a man and as a doctor.

THE PRESIDENT: The defendant Brock.

DR. BROCK: Your Honor, in 1929, I joined the NSDAP when more than six million German voters were already backing Hitler. His later successes during the years of peaceful reconstruction consolidated my conviction that he had forever liberated Germany from the misery in which it seemed to have fallen. For all those years, therefore, I had no reason to have any misgivings with regard to Hitler's personality and thus I also believed in the legality of the euthanasia decree as emanated directly from the head of the state. The state officials and doctors, competent for so at that time, told me that the euthanasia had always been an endeavor of mankind and was morally as well as medically justified. Therefore, I never doubted the legal character of the euthanasia decree.....

In the connection, however, I was assigned duties, the extent and importance of which I could not foresee. Neither my training nor my qualifications sufficed for this task. Nobody can deny, however my good faith in its justification, I frankly admitted what I did in the framework of the euthanasia measures and tried to prove that my collaboration was merely of a subordinate nature and exclusively directed by human aspects. I cannot be made responsible for later actions carried out by other officers and without my knowledge. These were the measures which I deeply regretted and when the prohibition of the inclusion of foreign nationals and Jews were infringed.

Through my activity in the Fuehrer Chancellery, I early became acquainted with the Gestapo atrocities. The testimonies of my witnesses

proves how I fought against them and the concentration camp system without having had any direct knowledge of concentration camps. I did so because I felt that I was obliged to help those concerned who suffered from the arbitrariness of the Gestapo. I did not do it because I recognized even at that time symptoms of a leadership that always and only knew arbitrariness and oppression.

But this is particularly the reason why I was so shocked about the misuse of some of the euthanasia institutions, for the action 14f13 affected particularly those persons whose detention I considered unjust and combatted. It was only in this court room however, that I learned of this action.

That I did not hate the Jews has been proved by numerous documents, but without the hatred of the Jews, the participation in the extermination of Jews is hardly tenable. The measures of suppression to which the Jews were subjected forced me to give them the same assistance within my competence as I accorded to the politically pursued persons. I thus helped by my activity hundreds of thousands of persons during the course of the years. But thus only could the sterilization suggestions come into existence. They were nothing but an attempt to prevent the extermination of innumerable Jews.

In spite of all the efforts of my defense counsel, it was impossible to procure the witnesses who could testify to this effect. They preferred to evade their responsibility of serving the truth. I am utterly alone. I must leave it to this High Tribunal to ascertain on the basis of the presented expert scientific opinions that all my proposals were actually so formulated as to show my convictions of their harmlessness, and the impossibility of realizing them.

I must also leave it to the Tribunal to judge whether a man who intended the extermination of the Jews would apply for service with the Army, just at the moment when the aim which he alleges that he pursued was achieved and the extermination measures had started. Or does it not appear paradoxical to assume that one and the same man

should give his approval of the extermination of the Jews and in fact aided such a program, and, at the same time, save Jews he has never known, such as Georgi, Passow, Meyer, Warburg, and others, from such measures.

I can only emphasize that particularly these sterilization suggestions to Himmler appeared to me to be the last possibility to take any action to save Jewry. Had I been indifferent to the Jewish fate, I would not be accused today. But I also tried in this respect, as was my habit, to give assistance and I am still convinced, that it had at least delaying, if not preventative effect. Certainly, the realization that such proposals should never have been made by me on the strength of my medical knowledge or my position at the time, even to the best of my intention, is something I could not reach until this trial was in progress. My good intention which was the basis of these proposals and my good will to help by means of them cannot be denied by anybody, and can in no event be understood as my conscientious cooperation in the extermination of the Jews.

THE PRESIDENT: Defendant Rosenberg.

DEFENDANT ROSENBERG: In the course of this trial, I have had full opportunity to speak in my defense. With special gratitude we realize the fact offered to us and we took advantage of it, which was given by the possibility to question individually Professor Ivy in this trial. I have seen how the Tribunal itself, by a precise questioning, clarified the facts, and to the statements made by my defense counsel I have nothing to add, because they are the truth.

THE PRESIDENT: Defendant Becker-Freysang.

DEFENDANT BECKER-FREYSENG: Mr. President, Gentlemen of the Tribunal: I also was given full opportunity to submit all the statements and the evidence required to refute the charges of the indictment. For that I have to thank the Tribunal and my defense counsel, Dr. Tipp. But I have nothing to add to it. For all the immaterial spiteful talk which grew outside and twisted around the objective atmosphere of these proceedings like a messy hedge, I believe that fortunately the verdict of this Tribunal must be and will be the appropriate answer. I look forward to it with the firm conviction that I have acted in my duty to mankind as a physician and scientist, and as a soldier to my fatherland, Germany.

THE PRESIDENT: The defendant Woltz:

DEFENDANT WOLTZ: I have nothing to add to the statement made by my defense counsel. I thank Dr. Wills for his efforts made in my defense.

THE PRESIDENT: The defendant Schaefer.

DEFENDANT SCHAEFER: May it please the Tribunal, since I consider myself entirely innocent, I ask to be acquitted. I repeat my request to be set free, , if possible, even before the verdict.

THE PRESIDENT: The defendant Hoven.

DEFENDANT HOVEN: I have nothing to add to Dr. Gawlik's plea of yesterday. I would at this point like to thank my defense counsel for the considerable help he has given me.

THE PRESIDENT: The defendant Beiglboeck.

DEFENDANT BEIGLBOECK: May it please the Tribunal, the experiments which I conducted, I did not carry out on my own initiative, neither according to the plans of my own, nor spontaneously, but the medical part was

played with the knowledge and approval of my clinical teacher; for more than ten years, I was a disciple of Springer. During those ten years I had come to know and respect his ways of thought and his superior knowledge. My relations to him were based on personal gratitude and awe-inspired devotion. If there was anything which he considered right and important, then for psychological reasons alone, it would be imperative for me to share his belief.

The experiments were to solve the problem of saving human life and that had to be approved. It was a military order which compelled me to carry them out in the atmosphere of a concentration camp. I objected against that, but I was not successful. So we had to carry it out in the concentration camp.

May it please the Tribunal, in your evaluation of this fact, please do not fail to consider that this did not happen in times of peace, nor in a country which granted its citizens individual freedom of decision in all matters, personal and professional, but during the bitter days of a most horrible war. What I carried out, I did in accordance with a plan previously determined and specified. If I had to require of my experimental subjects to undergo hardships and they suffered from thirst with all of its unpleasant sensations, those physical and mental characteristics, I did that in the nature of the experiments and this could not be avoided. I have not, however, done this without informing myself first by an experiment on my own system how it felt what I expected them to undergo, nor did I expect it of anyone else, unless I was firmly convinced that he undertook it voluntarily. It is not true to say that I might have forced anybody to do it, neither psychologically, nor by reprisals raised by threat, or force of

arms. Many eye witnesses have agreed that my conduct was never brutal on anyone of the experimental subjects under my care. Among these witnesses are even some who were brought here to testify against me.

At last, in the final stage of this trial, one experimental subject could be found who thought it appropriate to introduce a dramatic note in an atmosphere artificially created. Based on a layman's interpretation of indeed harmless medical procedures, combined with the uncertain recollection emotionally presented by more or less distorting and misconstruing my motives the attempt was made to lend an impression to my experiments and the part I played in them.

In contradiction to that a defense document was offered by others who came from outside the concentration camp and who preserved their objectivity which reveals that my behavior in the medical sense, as well as from the human point of view was correct, to say the least. By my experiments, no human life was sacrificed, nor did they result in any lasting damage to their health. I also believe, that I have presented proof that I intervened for the inmates, as far as that was within my power and that I did not consider experimental subjects as individuals of an inferior type whom I could well afford to illtreat, for ideological reasons, as has been charged.

For over 15 years as a physician I always felt the strongest responsibility for those entrusted to my care. Thousands who were my patients will confirm it. My assistants and colleagues have testified to it. At no time was my conduct other than that of humaneness, that of a physician. The experiments as they were actually

conducted have never gone beyond that which can be justified by the physician. I consider myself as a physician and a human being free of guilt.

THE PRESIDENT: The defendant Pokorny.

DEFENDANT POKORNY: Your Honor, during this trial I have often asked myself what I should have done at the time in order to record my true motive for this letter I had written to Himmler, but I believe that at the time when I dispatched this letter, I could not do anything else but to talk to the people in whom I had confidence and of whom I know that they would not betray me and confide in them my true reasons.

If today, this letter, which is against me, may seem objective, then this is a fact with which I must bear, although to the end I must say in correspondence with the truth that not surface reasons were the cause for my writing this letter, but that letter was written because at the time I had heard facts about Himmler's plans, and, because at that time in my position standing lonely and slandered because of my family implications in a small town in Czechoslovakia, I felt that I was able to take the action described.

I retain the hope that you, my judges, will draw your conclusions from my conduct and the situation in which I found myself at the time, and will come to the conviction objectively that the true motive was a different one than that which is shown by this letter, and that you will not sentence me but will believe me in what I have not only told you, my judges, but others previously during my interrogations and, before that, what I have told my friends, at a time when this present situation had not arisen, in order to clarify my motives as being true.

With this hope I am looking forward to your judgment, and in that connection I am thinking of my children who, for years now, have lived under the protection of an allied power and who will not believe that their father, after everything that he has suffered, could possibly have acted as an enemy to human rights.

THE PRESIDENT: The defendant Oberhauser.

DEFENDANT OBERHEUSER: I have nothing to add to the statements I have made from the witness box under oath. In administering therapeutic care, following established medical principles, as a woman in a difficult position, I have done the best I could. Moreover, I fully agree with the statements made by my defense counsel and will refrain, at this stage of the trial, from making any further statements.

THE PRESIDENT: The defendant Fischer.

DEFENDANT FISCHER: Your Honors, when this war began I was just a young doctor, 27 years of age. My attitude towards my people and my Fatherland took me to the front line as a troop doctor. I there joined an armored division, where I remained until I was incapacitated for further service. For only a very brief period, during these years of war, I worked as a medical officer in a hospital back home, and there too my conception of my duties was directed by the wish to serve my country. During this time of my work at home, I received the order which made me a subject of the indictment of this trial.

The order for my participation in these experiments originated from my highest medical and military superior and was passed on to me, as the assistant and first lieutenant, through Professor Gebhardt. Professor

Gebhardt was the famous surgeon and much honored creator of Hohenlychen. He was a scientific authority whom I looked up to with reverence and confidence. As a general of the Waffen SS he was my unconditional military superior. I believed him, that I had been earmarked by him to assist in the solution of a medical problem which was to bring help and salvation to hundreds of thousands of wounded soldiers, and which was to be a cure for them; and I believed that this problem would mean a question of life and death to my people. I believed unconditionally that this order had come to me from the head of the State, and that its execution was a necessity for the State. I considered myself bound by this order, as were thousands of soldiers whom I had seen walk to their deaths during my years at the front, also following an order by the State. Particularly since I had had the privilege during that time of working in a hospital at home, I considered myself doubly and particularly subject to that discipline, and felt myself in duty bound.

What this order demanded from me had been introduced as a method of modern medicine in all civilized countries. I was only to participate in the clinical part of it, and that was taking place just as a course of treatment in the institute of Hohenlychen, or any other clinic. What I did was what was ordered, and I did nothing beyond that order. I believed that I, as a simple citizen, did not have the right to criticize the measures of the State, particularly not at a time in which our country, our State, was engaged in a struggle for life and death.

I hope that through my unconditional devotion at the front and to my two injuries, I have shown that I not only asked others to make sacrifices, but that I was prepared at any time to sacrifice myself with my life and my health. Within the scope of the order given to me I did what I could, in my limited position as an assistant doctor, for the life of the experimental subjects and for an exact and proper clinical development of the experiment. I never found myself in a position where I had to expect that deaths would occur. When such fatalities did occur, I was as shaken by that event as I was by the death of a friend of our

clinic. After that, the experiments were immediately discontinued, and I went back to the division at the front.

Together with Professor Gebhardt, I reported about these experiments to the German public. Like many other Germans, there are many things which, in retrospect, I see more clearly today and in a new light. In my young life I have tried to be a faithful son of my people, and that brought me into this present miserable position. I only wanted what was good. In my life I have never followed egotistical aims, and I was never motivated by base instincts. For that reason, I feel free of any guilt inside me. I have acted as a soldier, and as a soldier I am ready to bear the consequences. However, that I was born a German, that is something about which I do not want to complain.

THE PRESIDENT: The personal statements by the defendants in this proceeding, made on their own behalf, have been heard by the Tribunal during this session in open court, and these statements are now concluded.

After over seven months of trial, consuming, I think, 139 trial days, hearing over 80 or 85 witnesses, the reception in evidence of many hundreds of documents and affidavits, the trial, insofar as the reception of evidence, arguments of counsel, and personal statements of the defendants, is not concluded. The Tribunal will now recess and enter upon the preparation of the judgment to be rendered in this cause. How long that preparation of the judgment will consume is, of course, uncertain, probably not less than three weeks nor more than five.

Counsel for the defendants must keep the Secretary General's office advised of their whereabouts, so that when the Tribunal is ready to formally render its judgment they will be available to appear before the Tribunal.

The Tribunal will now be in recess, subject to call by its own order, to reconvene to render the formal judgment in the cause.

(At 1225 hours, 19 July 1947, a recess was taken, subject to call by the Tribunal.)

Official Transcript of the American Military
Tribunal in the United States
of America, against Karl Brandt, et al, defendants,
sitting at Nurnberg, Germany, on 19 August, 1947,
0930 -- Justice Soals presiding.

THE MARSHAL: Persons in the court room will please find their
seats.

The Honorable, the Judges of Military Tribunal I.

Military Tribunal I is now in session. God save the United States
of America and this Honorable Tribunal.

There will be order in the court room.

THE PRESIDING: Mr. Marshal, you have ascertained all defendants
are present in court?

THE MARSHAL: Yes it please your Honor, all defendants are present
in the court room.

THE PRESIDING: The Secretary-General will note for the record
the presence of all the defendants in Court.

The evidence in the case of the United States of America versus
Karl Brandt, and others, defendants, having been closed, counsel for
the prosecution and the defendants having filed their briefs and sub-
mitted them to the Tribunal, the Tribunal after consideration of the
evidence and the briefs filed, is now ready to pronounce its judgment
in the case of the United States of America versus Karl Brandt, and
others, presently pending before this Tribunal.

In the reading of the judgment the formal title of the case will
not be read.

The reading will commence with the judgment itself:

J U D G M E N T

Military Tribunal I was established on 25 October 1946
under Military Order No. 66 issued by command of the United
States Military Government for Germany. It was the first of
several Military Tribunals constituted in the United States
Zone of Occupation pursuant to Military Government Ordinance
No. 7, for the trial of offenses recognized as crimes by law



No. 10 of the Control Council for Germany.

By the terms of the order which established the Tribunal and designated the undersigned as members thereof, Military Tribunal I was ordered to convene at Nuernberg, Germany, to hear such cases as might be filed by the Chief of Counsel for War Crimes or his duly designated representative.

On 25 October 1946, the Chief of Counsel for War Crimes lodged an indictment against the defendants named in the caption above in the Office of the Secretary General of Military Tribunals at the Palace of Justice, Nuernberg, Germany. A copy of the indictment in the German language was served on each defendant on 5 November 1946. Military Tribunal I arraigned the defendants on 21 November 1946, each defendant entering a plea of "not guilty" to all the charges preferred against him.

The presentation of evidence to sustain the charges contained in the indictment was begun by the Prosecution on 7 December 1946. At the conclusion of the prosecution's case in chief the defendants began the presentation of their evidence. All evidence in the case was concluded on 3 July 1947. During the week beginning 14 July 1947 the Tribunal heard arguments by counsel for the Prosecution and Defense. The personal statements of the defendants were heard on 19 July 1947 on which date the case was finally concluded.

The trial was conducted in two languages - English and German. It consumed 139 trial days, including 5 days allocated for final arguments and the personal statements of the defendants. During the 133 trial days used for the presentation of evidence 32 witnesses gave oral evidence for the Prosecution and 53 witnesses, including the 23 defendants, gave oral evidence for the Defense. In addition, the Prosecution put in evidence as

exhibits a total of 590 affidavits, reports and documents; the ~~Defense~~ put in a total number of 961 -- making a grand total of 1471 documents received in evidence.

Copies of all exhibits tendered by the Prosecution in their case in chief were furnished in the German language to the defendants prior to the time of the reception of the exhibits in evidence.

Each defendant was represented at the arraignment and trial by counsel of his own selection.

Whenever possible, all applications by defense counsel for the procuring of the personal attendance of persons who made affidavits in behalf of the Prosecution were granted and the persons brought to Nurnberg for interrogation or cross-examination by defense counsel. Throughout the trial great latitude in presenting evidence was allowed Defense counsel, even to the point at times of receiving in evidence certain matters of but scant probative value.

All of these steps were taken by the Tribunal in order to allow each defendant to present his defense completely, in accordance with the spirit and intent of Military Government Ordinance No. 7 which provides that a defendant shall have the right to be represented by counsel, to cross-examine prosecution witnesses, and to offer in the case all evidence deemed to have probative value.

The evidence has now been submitted, final arguments of counsel have been concluded, and the Tribunal has heard personal statements from each of the defendants. All that remains to be accomplished in the case is the rendition of judgment and the imposition of sentence.

THE JURISDICTION OF THE TRIBUNAL

The jurisdiction and powers of this Tribunal are fixed and determined by Law No. 10 of the Control Council for Germany.

The pertinent portions of the Law with which we are concerned provide as follows:

Article XI

"1. Each of the following acts is recognized as a crime:

"(b) War Crimes: Atrocities or offenses against persons or property constituting violations of the laws or customs of war, including but not limited to, murder, ill-treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

"(c) Crimes Against Humanity: Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecution on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

"(d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal.

"2. Any person without regard to nationality or capacity in which he acted, is deemed to have committed a crime as defined inthis article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a participating part therein or (d) was connected with plans or

enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime.....

"4. (a) The official position of any person, whether as Head of State or as a responsible official in a Government Department, does not free him from responsibility for a crime or entitle him to mitigation of punishment.

(b) The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation."

The indictment in the case at bar is filed pursuant to these provisions.

Judge Crawford will continue reading:

JUDGE CRAWFORD:

THE CHARGES

The indictment is framed in four counts.

Count One - The Common Design or Conspiracy: The first Count of the indictment charges that the defendants, acting pursuant to a common design, unlawfully, wilfully and knowingly did conspire and agree together to commit war crimes and crimes against humanity as defined in Control Council Law No. 10.

During the course of the trial the defendants challenged the first count of the indictment, alleging as grounds for their motion the fact that under the basic law the Tribunal did not have jurisdiction to try the crime of conspiracy considered as a separate substantive offense. The motion was set down for argument and duly argued by counsel for the prosecution and the defense. Thereafter, in one of its trial sessions the Tribunal granted the motion. That this judgment may be complete, the ruling made at that time is incorporated in this judgment. The order which was entered on the motion is as follows:

"It is the ruling of this Tribunal that neither the Charter of the International Military Tribunal nor Control Council Law No. 10 has defined conspiracy to commit a war crime or crime against humanity as a separate substantive crime; therefore, this Tribunal has no jurisdiction to try any defendant upon a charge of conspiracy considered as a separate substantive offense.

"Count I of the indictment, in addition to the separate charge of conspiracy, also alleges unlawful participation in the formulation and execution of plans to commit war crimes and crimes against humanity which actually involved the commission of such crimes. We, therefore,

won't properly strike the whole of Count I from the indictment, but, insofar as Count I charges the commission of the alleged crime of conspiracy as a separate substantive offense, distinct from any war crime or crime against humanity, the Tribunal will disregard that charge.

"This ruling must not be construed as limiting the force or effect of Article 2, paragraph 2 of Control Council Law No. 10, or as denying to either prosecution or defense the right to offer in evidence any facts or circumstances occurring either before or after September, 1939, if such facts or circumstances tend to prove or to disprove the commission by any defendant of war crimes or crimes against humanity as defined in Control Council Law No. 10."

Counts Two and Three - War Crimes and Crimes Against Humanity:

The second and third counts of the indictment charge the commission of war crimes and crimes against humanity. The counts are identical in content, except for the fact that in count two the acts which are made the basis for the charges are alleged to have been committed on "civilians and members of the armed forces then at war with the German Reich in the exercise of belligerent control", whereas in count three the criminal acts are alleged to have been committed against "German civilians and nationals of other countries." With this distinction observed, both counts will be treated as one and discussed together.

Counts two and three allege, in substance, that between September 1939 and Apr. 1 1945 all of the defendants "were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving medical experiments without the subjects' consent in the course of which experiments the defendants committed murders, brutalities, cruelties, tortures, atrocities, and other inhumane acts." It is averred that "such experiments included, but were not limited to" the following:

"(A) High Altitude Experiments. From about March 1943 to about August 1945 experiments were conducted at the Dachau Concentration Camp for the benefit of the German Air Force to investigate the limits of human endurance and existence at extremely high altitudes. The experiments were carried out in a low pressure chamber in which the atmospheric conditions and pressures prevailing at high altitudes (up to 68,000 feet) could be duplicated. The experimental subjects were placed in the low pressure chamber and thereafter the simulated altitude therein was raised. Many victims died as a result of these experiments and others suffered grave injury, torture, and ill-treatment. The defendants, Karl Brandt, Handloser, Schroeder, Gebhardt, Rudolf Brandt, Krugowsky, Poppendorf, Siemers, Eick, Scherz, Becker, Treysman, and Welter are charged with special responsibility for and participation in these crimes.

"(B) Frostbite Experiments. From about August 1943 to about May 1945 experiments were conducted at Dachau Concentration Camp primarily for the benefit of the German Air Force to investigate the most effective means of treating persons who had been severely chilled or frozen. In one series of experiments the subjects were forced to remain in a tank of ice water for periods up to three hours. Extreme rigor developed in a short time. Numerous victims died in the course of these experiments. After the survivors were removed, resuscitation was attempted by various means. In another series of experiments, the subjects were kept naked outdoors for many hours at temperatures below freezing. The defendants Karl Brandt, Handloser, Schroeder, Gebhardt, Rudolf Brandt, Krugowsky, Poppendorf, Siemers, Becker-Treysman, and Welter are charged with special responsibility for and participation in these crimes.

"(C) Malaria Experiments. From about February 1943 to about April 1945 experiments were conducted at the Dachau Concentration Camp in order to investigate immunization for and treatment of malaria. Malaria concentration camp inmates were infected by

mosquitoes or by injections of extracts of the mucous glands of mosquitoes. After having contracted malaria the subjects were treated with various drugs to test their relative efficacy. Over 1,000 involuntary subjects were used in these experiments. Many of the victims died and others suffered severe pain and permanent disability. The defendants Karl Brandt, Handloser, Rostock, Gebhardt, Flume, Rudolf Brandt, Wrurowsky, Poppendick, and Sievers are charged with special responsibility for and participation in these crimes.

"(D) Lept (Mustard) Gas Experiments. At various times between September 1939 and April 1945 experiments were conducted at Sachsenhausen, Weizsacker, and other concentration camps for the benefit of the German Armed Forces to investigate the most effective treatment of wounds caused by Lept gas. Lept is a poison gas which is commonly known as Mustard gas. Wounds deliberately infected on the subjects were infected with Lept. Some of the subjects died as a result of these experiments and others suffered intense pain and injury. The defendants Karl Brandt, Handloser, Flume, Rostock, Gebhardt, Rudolf Brandt, and Sievers are charged with special responsibility for and participation in these crimes.

"(E) Sulfanilamide Experiments. From about July 1942 to about September 1943 experiments to investigate the effectiveness of sulfanilamide were conducted at the Ravensbruck Concentration Camp for the benefit of the German Armed Forces. Wounds deliberately inflicted on the experimental subjects were infected with bacteria such as streptococcus, gas gangrene, and tetanus. Circulation of blood was interrupted by tying off blood vessels at both ends of the wound to create a condition similar to that of a battlefield wound. Infection was aggravated by forcing wood shavings and ground glass into the wounds. The infection was treated with sulfanilamide and other drugs to determine their effectiveness. Some subjects died as a result of these experiments and others suffered serious injury and intense agony. The defendants Karl Brandt, Handloser, Rostock, Schroeder,

Genken, Gebhardt, Biese, Rudolf Brandt, Mrugowsky, Poppendick, Becker-Freyse, Oberhouser, and Fischer are charged with special responsibility for and participation in these crimes.

"(F) Bone, Muscle, and Nerve Regeneration and Bone Transplantation Experiments. From about September 1942 to about December 1943 experiments were conducted at the Ravensbruck Concentration Camp for the benefit of the German Armed Forces to study bone, muscle, and nerve regeneration, and bone transplantation from one person to another. Sections of bones, muscles, and nerves were removed from the subjects. As a result of these operations, many victims suffered intense agony, mutilation, and permanent disability. The defendants Karl Brandt, Handloser, Rostock, Gebhardt, Rudolf Brandt, Oberhouser, and Fischer are charged with special responsibility for and participation in these crimes.

"(G) Seawater Experiments. From about July 1944 to about September 1944 experiments were conducted at the Dachau Concentration Camp for the benefit of the German Air Force and Navy to study various methods of making seawater drinkable. The subjects were deprived of all food and given only chemically processed seawater. Such experiments caused great pain and suffering and resulted in serious bodily injury to the victims. The defendants Karl Brandt, Handloser, Rostock, Schroeder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Biese, Becker-Freyse, Schefer, and Seiglböck are charged with special responsibility for and participation in these crimes.

"(H) Epidemic Jaundice Experiments. From about June 1943 to about January 1945 experiments were conducted at the Sachsenhausen and Mauthausen Concentration Camps for the benefit of the German Armed Forces to investigate the cause of, and inoculations against epidemic jaundice. Experimental subjects were deliberately infected with epidemic jaundice, some of whom died as a result, and all were caused great pain and suffering. The defendants

Karl Brandt, Handloser, Bestack, Schroeder, Gebhardt, Rudolf Brandt, Krugowsky, Poppendick, Stevere, Baez, and Becker-Freyson are charged with special responsibility for and participation in these crimes.

"(I) Sterilization Experiments. From about March 1941 to about January 1945 sterilization experiments were conducted at the Auschwitz and Ravensbruck Concentration Camps, and other places. The purpose of these experiments was to develop a method of sterilization which would be suitable for sterilizing millions of people with a minimum of time and effort. These experiments were conducted by means of X-Ray, surgery, and various drugs. Thousands of victims were sterilized and thereby suffered great mental and physical anguish. The defendants Karl Brandt, Gebhardt, Rudolf Brandt, Krugowsky, Poppendick, Brack, Pokorny, and Cherhauer are charged with special responsibility for and participation in these crimes.

"(J) Spotted Fever Experiments. From about December 1941 to about February 1945 experiments were conducted at the Buchenwald and Mauthausen Concentration Camps for the benefit of the German Armed Forces to investigate the effectiveness of spotted fever and other vaccines. At Buchenwald numerous healthy inmates were deliberately infected with spotted fever virus in order to keep the virus alive; over 90% of the victims died as a result. Other healthy inmates were used to determine the effectiveness of different spotted fever vaccines and of various chemical substances. In the course of these experiments 75% of the selected number of inmates were vaccinated with one of the vaccines or nourished with one of the chemical substances and, after a period of three to four weeks, were infected with spotted fever germs. The remaining 25% were infected without any previous protection in order to compare the effectiveness of the vaccines and the chemical substances. As a result, hundreds of the persons experimented upon died. Experiments with yellow fever, smallpox, typhus, paratyphus A and B, cholera, and diphtheria were also conducted. Similar

experiments with like results were conducted at Natzweiler Concentration Camp. The defendants Karl Brandt, Handloser, Rostock, Schroeder, Gonsken, Gohardt, Rudolf Brandt, Krugowsky, Poppendick, Sievers, Easo, Becker-Draysong, and Hoven are charged with special responsibility for and participation in these crimes.

"(K) Experiments with Poison. In or about December 1943 and in or about October 1944 experiments were conducted at the Buchenwald Concentration Camp to investigate the effect of various poisons upon human beings. The poisons were secretly administered to experimental subjects in their food. The victims died as a result of the poison or were killed immediately in order to permit autopsies. In or about September 1944 experimental subjects were shot with poison bullets and suffered torture and death. The defendants Gonsken, Gohardt, Krugowsky, and Poppendick are charged with special responsibility for and participation in these crimes."

In addition to the medical experiments, the nature and purpose of which have been outlined as alleged, certain of the defendants are charged with criminal activities involving murder, torture, and ill-treatment of non-German nationals as follows:

"7. Between June 1943 and September 1944 the defendants Rudolf Brandt and Sievers... were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the murder of civilians and members of the armed forces of nations then at war with the German Reich in exercise of belligerent control. One hundred twelve Jews were selected for the purpose of completing a skeleton collection for the Reich University of Strasbourg. Their photographs and anthropological measurements were taken. Then they were killed. Thereafter, comparison tests, anatomical research, studies regarding race, pathological features of the body, form and size of the brain, and other tests, were made. The bodies were sent to Strasbourg and defleshed.

"6. Between May 1942 and January 1943 the defendants Blass and Rudolph Brandt... were principals in accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the murder and mistreatment of tens of thousands of Polish nationals who were civilians and members of the armed forces of a nation then at war with the German Reich and who were in the custody of the German Reich in exercise of belligerent control. These people were alleged to be infected with incurable tuberculosis. On the ground of insuring the health and welfare of Germans in Poland, many tubercular Poles were ruthlessly exterminated while others were isolated in death camps with inadequate medical facilities.

"7. Between September 1939 and August 1941 the defendants Blass, Brandt, Alois Brandt, and Heymann... were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the execution of the so-called "euthanasia" program of the German Reich in the course of which the defendants herein murdered hundreds of thousands of human beings, including nationals of German-occupied countries. This program involved the systematic and secret execution of the aged, insane, incurably ill, of deformed children, and other persons, by gas, lethal injections, and diverse other means in nursing homes, hospitals, and asylums. Such persons were regarded as "useless eaters" and a burden to the German war machine. The relatives of these victims were informed that they died from natural causes, such as heart failure. German doctors involved in the "euthanasia" program were also sent to the Eastern occupied countries to assist in the mass extermination of Jews."

Courses two and three of the indictment conclude with the averment that the crimes and atrocities which have been delineated "constitute violations of international

conventions..., the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10.⁸

Count Four - Membership in Criminal Organizations:

The fourth count of the indictment alleges that the defendants Karl Brandt, Gensler, Gebhardt, Rudolf Brandt, Krugovsky, Poppendick, Sievers, Bock, Hoven and Fischer are guilty of membership in an organization declared to be criminal by the International Military Tribunal, in that each of these named defendants was a member of DIE SCHUTZSTAFELN DER NATIONAL SOZIALISTISCHEN DEUTSCHEN ARBEITSPARTEI (commonly known as the SS) after 1 September 1939, in violation of Paragraph 1 (d) Article II of Control Council Law No. 10.

Before turning our attention to the evidence in the case we shall state the law announced by the International Military Tribunal with reference to membership in an organization declared criminal by the Tribunal:

"In addition with the SS the Tribunal includes all persons who had been officially accepted as members of the SS including the members of the Allgemeine SS, members of the Waffen-SS, members of the SS-Totenkopf Verbände, and the members of any of the different police forces who were members of the SS. The Tribunal does not include the so-called riding units....

"The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding,

however, those who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such crimes. The basis of this finding is the participation of the organization in War Crimes and Crimes against Humanity connected with the war; this group declared criminal cannot include, therefore, persons who had ceased to belong to the organizations enumerated in the preceding paragraph prior to 1 September 1939."

THE PRESIDENT: Judge Sobrin will continue with the reading of the judgment.

JUDGE SOBRIEN:

THE PROOF AS TOWARD CRIMES AND CRIMES
AGAINST HUMANITY

Judged by any standard of proof the record clearly shows the commission of war crimes and crimes against humanity substantially as alleged in counts two and three of the indictment. Beginning with the outbreak of World War II criminal medical experiments on non-German nationals, both prisoners of war and civilians, including Jews and "asocial" persons, were carried out on a large scale in Germany and the occupied countries. These experiments were not the isolated and casual acts of individual doctors and researchers working solely on their own responsibility, but were the product of coordinated policy-making and planning at high governmental, military, and Nazi Party levels, conducted as an integral part of the total war effort. They were ordered, sanctioned, permitted or approved by persons in positions of authority who under all principles of law were under the duty to know about these things and to take steps to terminate or prevent them.

PERMISSIBLE MEDICAL EXPERIMENTS

The great weight of the evidence before us is to the effect that certain types of medical experiments on human beings, when kept within reasonably well-defined bounds, conform to the ethics of the medical profession generally. The protagonists of the practice of

human experimentation justify their views on the basis that such experiments yield results for the good of society that are unprocureable by other methods or means of study. All agree, however, that certain basic principles must be observed in order to satisfy moral, ethical and legal concepts:

1. The voluntary consent of the human subject is absolutely essential.

This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

2. The experiment should be such as to yield fruitful results for the good of society, unprocureable by other methods or means of study, and not random and unnecessary in nature.

3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

4. The experiment should be so conducted as to avoid all unnecessary

physical and mental suffering and injury.

5. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.

6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

7. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

8. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

9. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

10. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

Of the two principles which have been enumerated our judicial concern, of course, is with those requirements which are purely legal in nature -- or which at least are so closely and clearly related to matters legal that they assist us in determining criminal culpability and punishment. To go beyond that point would lead us into a field that would be beyond our sphere of competence. However, the point need

not be labored. We find from the evidence that in the medical experiments which have been proven, these ten principles were much more frequently honored in their breach than in their observance. Many of the concentration camp inmates who were the victims of these atrocities were citizens of countries other than the German Reich. Many were non-German nationals, including Jews and "asocial persons", both prisoners of war and civilians, who had been imprisoned and forced to submit to these tortures and barbarities without so much as a semblance of trial. In every single instance appearing in the record, subjects were used who did not consent to the experiments; indeed, as to some of the experiments, it is not even contended by the defendants that the subjects occupied the status of volunteers. In no case was the experimental subject at liberty of his own free choice to withdraw from any experiment. In many cases experiments were performed by unqualified persons; were conducted at random for no adequate scientific reason, and under revolting physical conditions. All of the experiments were conducted with unnecessary suffering and injury and but very little, if any, precautions were taken to protect or safeguard the human subjects from the possibilities of injury, disability, or death. In every one of the experiments the subjects experienced extreme pain or torture, and in most of them they suffered permanent injury, mutilation, or death, either as a direct result of the experiments or because of lack of adequate follow-up care.

Obviously all of these experiments involving brutalities, tortures, disabling injury and death were performed in complete disregard of international conventions, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, and Control Council Law No. 10. Manifestly human experiments under such conditions are contrary to "the principles of the laws of nations as they result from the usages established

among civilized peoples, from the laws of humanity, and from the dictates of public conscience."

Whether any of the defendants in the dock are guilty of these atrocities is, of course, another question.

Under the Anglo-Saxon system of jurisprudence every defendant in a criminal case is presumed to be innocent of an offense charged until the prosecution, by competent, credible proof, has shown his guilt to the exclusion of every reasonable doubt. And this presumption abides with a defendant through each stage of his trial until such degree of proof has been adduced. A "reasonable doubt" as the name implies, is one conformable to reason - a doubt which a reasonable man would entertain. Stated differently, it is that state of a case which, after a full and complete comparison and consideration of all the evidence, would leave an unbiased, unprejudiced, reflective person, charged with the responsibility for decision, in the state of mind that he could not say that he felt an abiding conviction amounting to a moral certainty of the truth of the charge.

If any of the defendants are to be found guilty under counts two or three of the indictment it must be because the evidence has shown beyond a reasonable doubt that such defendant, without regard to nationality or the capacity in which he acted, participated as a principal in, accessory to, ordered, abetted, took a consenting part in, or was connected with plans or enterprises involving the commission of at least some of the medical experiments and other atrocities which are the subject matter of these counts. Under no other circumstances may he be convicted.

Before examining the evidence to which we must look in order to determine individual culpability a brief statement concerning some of the official agencies of the German government and Nazi Party which will be referred to in this judgment seems desirable.

THE PRESENT: THE MEDICAL SERVICE IN GERMANY

Adolf Hitler was the head of the Nazi Party, the German Government, and the German Armed Forces. His title as Chief of the government was "Reich Chancellor". As Supreme Leader of the National Socialist German Worker's Party, commonly called the NSDAP or Nazi Party, his title was "Fuehrer". As head of Germany's armed military might he was "Supreme Commander in Chief of the German Armed forces, or Wehrmacht".

The staff through which Hitler controlled the German Armed Forces was known as the "Supreme Command of the Wehrmacht" (OKW). The chief of this staff was Field Marshal Wilhelm Keitel.

Under the Supreme Command of the Wehrmacht were the Supreme Commands of the Army, Navy, and Air Force. The Supreme Command of the Navy (OKM) was headed by Grand Admiral Karl Doenitz. The Supreme Command of the Army (OKH) was headed by Field Marshal Walter von Brauchitsch until December 1941, and thereafter by Hitler himself. The Supreme Command of the Air Force (OKL) was headed by Reichsmarshal Hermann Goering.

Each of the three branches of the Wehrmacht maintained its own medical service.

Army Medical Service: The defendant Handloser was the head of the Army Medical Service from 1 January 1941 to 1 September 1944. While in this position he served in two capacities, namely: as Army Medical Inspector and as Army Physician. These positions required the maintenance of two departments, each separate from the other. At one time or another there were subordinated to Handloser in these official capacities the following officers, among others: Generalarzt Prof. Schroiber and Prof. Jostock; Oberstabsarzt Drs. Scholz, Eyer, Bernhard Schmidt and Gremer; Oberstabsarzts Prof. Gutzeit and Prof. Wirth; Stabsarzt Prof. Niewe and Prof. Willen, and Stabsarzt Dr. Dohmen. Under his supervision in either or both of his official capacities were the Military Medical Academy, the Typhus and Virus Institutes of the

OFR at Gressow and Lamberg, and the Medical School for Mountain Troops at St. Johann.

Luftwaffe Medical Service: From the beginning of the war until 1 January 1944 Hippke was Chief of the Medical Service of the Luftwaffe. On that date the defendant Schroeder succeeded Hippke and remained in that position until the end of the war.

Subordinated to Schroeder as Chief of the Medical Service of the Luftwaffe were the following defendants: Rose, who was consulting medical officer on hygiene and tropical medicine; Welts, who was chief of the Institute for Aviation Medicine in Munich; Becker-Freyseng, a consultant for aviation medicine in Schroeder's office; Ruff, the chief of the Institute for Aviation Medicine in the German Experimental Institute for Aviation in Berlin; Romberg, Ruff's chief assistant, who toward the end of the war attained the position of a Department head at the Institute; Schaefer, who, in the summer of 1942, was assigned to the Staff of the Research Institute for Aviation Medicine in Berlin to do research work on the problem of sea emergency; and Beiglboeck, a Luftwaffe officer who performed medical experiments on concentration camp inmates at Dachau in July 1944 for the purpose of determining the potability of processed sewerage.

Under Schroeder's jurisdiction as Chief of the Luftwaffe Medical Service was the Medical Academy of the Luftwaffe at Berlin.

SS Medical Service: One of the most important branches of the Nazi Party was the Schutzstaffeln of the NSDAP, commonly known as the SS. Heinrich Himmler was chief of the SS with the title of Reichsfuehrer SS, and on his personal staff, serving in various and sundry official capacities was the defendant Rudolf Brandt.

The SS maintained its own medical service headed by a certain Dr. Grewitz, who held the position of Reich Physician SS and Police.

Medical Service of the Waffen-SS: The SS branch of the Nazi Party, in turn, was divided into several components, of which one of the most important was the Waffen, or Armed, SS. The Waffen SS was formed

into military units and fought at the front with units of the Wehrmacht. Such medical units of the Waffen-SS as were assigned to the field, became subordinated to the medical service of the Army, which was supervised by Handloser.

The Chief of the Waffen-SS Medical Service was the defendant Genzken. His immediate superior was Reich Physician SS and Police Grawitz.

Six other defendants in the dock were members of the Medical Service of the SS, under Grawitz, namely; Gebhardt, who in 1940 became surgical advisor to the Waffen-SS and who in August 1943 created and took over the position of Chief Clinical Officer of the Reich Physician SS and Police; Mrugowsky, who became Chief of the Hygiene Institute of the Waffen-SS under Genzken in November 1940, and when the Institute was taken from Genzken's supervision on 1 September 1943 and placed under direct subordination to Grawitz, remained as Chief; Poppendick, who in 1941 was appointed Chief Physician of the Main Race and Settlement Office in Berlin and who in 1943 also became Chief of the Personal Staff of the Reich Physician SS and Police; Hoven, who from the beginning of 1941 until July 1942, served as the assistant, and from then to September 1943, as Chief Physician, at the Buchenwald Concentration Camp; Fischer, an assistant physician to the defendant Gebhardt; and finally the defendant Barthelmer, who in December 1940 became a physician at the Ravensbruck Concentration Camp, and thereafter, from June 1943 until the end of the war, served as an assistant physician under the defendant Gebhardt at Hohenlychen.

Civilian Medical Service: Throughout the war the Civilian Medical Services of the Reich were headed by a certain Dr. Leonard Conti. Conti had two principal capacities: (1) He was the Secretary of State for Health in the Ministry of the Interior of the Government; in this capacity he was a German civil servant subordinated to the Minister of the Interior -- first Wilhelm Frick and later, Heinrich Himmler. (2) he was the Reich Health Leader of the Nazi Party; in this

capacity he was subordinated to the Nazi Party Chancellery, the chief of which was Martin Bormann. In his capacity as Reich Health Leader, Conti had as his deputy the defendant Blome.

Reorganization of Wehrmacht Medical Service: In 1942 a reorganization of the various Medical Services of the Wehrmacht was effected. By a Fuehrer decree of 23 July 1942, Handloser became Chief of the Medical Services of the Wehrmacht, while at the same time retaining his position as Chief Physician of the Army and Army Medical Inspector. Under the decree referred to, Handloser was given power and authority to supervise and coordinate "all tasks common to the Medical Services of the Wehrmacht, the Waffen-SS and the organizations and units subordinate or attached to the Wehrmacht." He was also commanded "to represent the Wehrmacht before the civilian authorities in all common medical problems arising in the various branches of the Wehrmacht, the Waffen-SS and organizations and units subordinate or attached to the Wehrmacht" and "to protect the interests of the Wehrmacht in all medical measures taken by the civilian authorities."

Handloser thus became supreme medical leader in the military field, as was Conti in the civilian health and medical service.

By a subsequent Fuehrer decree of 7 August 1944 Handloser was relieved of his duties as Chief Physician of the Army and Army Medical Inspector, but retained his position as Chief of the Wehrmacht Medical Service.

By the decree of 23 July 1942 pursuant to which Handloser became Chief of the Medical Services of the Wehrmacht, the defendant Karl Brandt became empowered, subordinate only to, and receiving instructions directly from, Hitler "to carry out special tasks and negotiations to readjust the requirements for doctors, hospitals, medical supplies, etc., between the military and the civilian sectors of the Health and Medical Services." The decree also directed that Brandt "is to be kept informed about the fundamental events in the medical service of the Wehrmacht and in the Civilian Health Service" and "is authorized to intervene in

a responsible manner."

A subsequent decree issued 5 September 1943 extended the powers of the defendant Karl Brandt by providing: "The plenipotentiary for the Medical and Health Services ... is charged with centrally coordinating and directing the problems and activities of the entire Medical and Health Service according to instructions. In this sense this order applies also to the field of medical science and research, as well as to the organizational institutions concerned with the manufacture and distribution of medical material. The plenipotentiary for the Medical and Health services is authorized to appoint and commission special Deputies for this sphere of action."

By a later decree of 25 August 1944 Karl BRANDT was made Reich Commissioner for Sanitation and Health for the duration of the war; the decree providing:

"In this capacity his office ranks as highest Reich Authority" and he is "authorized to issue instructions to the offices and organizations of the State, Party, and Wehrmacht which are concerned with the problems of the Medical and Health Services."

Thus, by this series of decrees, the defendant Karl BRANDT, within this sphere of competence, became the supreme medical authority of the Reich subordinate to no one but Hitler.

Three of the defendants are not physicians.

The first is the defendant Brack who became subordinated to Buhler at the time the latter was appointed Chief of the Chancellery of the Fuehrer, in 1934, and remained with Buhler throughout the war.

The second is the defendant Rudolf BRANDT who, from the time he joined the staff of Himmler in 1933, served for a twelve year period in varying capacities. At first Rudolf Brandt was a mere clerk in the staff of the Reichsfuehrer SS but by 1936 had risen to chief of the Personal Staff of Himmler. In 1938 or 1939 he became Himmler's liaison officer to the Ministry of the Interior and particularly to the Office of the Secretary of the Interior. When Himmler became Minister of

Interior in 1943 Rudolf Brandt became Chief of the Ministerial Office when Himmler became President of the Ahnenerbe Society, Rudolf Brandt became liaison officer between Himmler and the Reich Secretary of the Ahnenerbe Society, defendant Wolfram Sievers.

The third is the defendant Sievers, who was a member of Himmler's personal staff and Reich Business Manager of the Ahnenerbe Society from 1 July 1935 until the end of the war.

THE AHNENERBE SOCIETY

The Ahnenerbe Society, of which Sievers was Reich Business Manager, was in existence as an independent entity as early as 1933. On 1 July 1935 the Ahnenerbe became duly registered as an organization to conduct or further "research on the locality, mind, deeds and heritage of the Northern race of Indo-Germans and to pass on the results of this research to the people in an interesting manner." On 1 January 1942 the Society became part of the Personal Staff of the Reichsfuehrer SS and thereby a section of the SS. Its management was composed of Heinrich Himmler as President, Prof. Dr. Wuest, Rector of the University of Munich, as Curator, and the defendant Sievers as Reich Business Manager.

Subsequently, during the same year, the Institute of Military Scientific Research was established as a part of the Ahnenerbe. Its purposes are defined in a letter written by Himmler to Sievers, which directed the following with reference to the Ahnenerbe:

- "1. To establish an Institute for Military Scientific Research
2. To support in every possible way the research carried out by SS Hauptsturmfuehrer Prof. Dr. Hirt and to promote all corresponding research and undertakings
3. To make available the required apparatus, equipment, accessories and assistants, or to procure them
4. To make use of the facilities available in Dachau.
5. To contact the Chief of the SS Economic and Administrative Main Office with regards to the costs which can be borne by the Waffen-SS."

In its judgment, the International Military Tribunal made the following findings of fact with reference to the Ahnenerbe:

"Also attached to the SS main offices was a research foundation known as the Experiments Ahnenerbe. The scientists attached to this organization are stated to have been mainly honorary members of the SS. During the war an institute for military scientific research became attached to the Ahnenerbe which conducted extensive experiments involving the use of living human beings. An employee of this institute was a certain Dr. Rascher, who conducted these experiments with the full knowledge of the Ahnenerbe, which was subsidized and under the patronage of the Reichsfuehrer SS who was a trustee of the foundation. We shall now discuss the evidence as it pertains to the individual defendants."

KARL BRANDT

The defendant Karl Brandt is charged with special responsibility for, and participation, in Freezing, Malaria, Lost Gas, Sulfanilamide,

Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea Water, Epidemic Jaundice, Sterilization, and Spotted Fever Experiments, as alleged under Counts Two and Three of the Indictment. He is also charged in Counts Two and Three with criminality in connection with the planning and carrying out of the Euthanasia program of the German Reich. Under Count Four of the Indictment he is charged with Membership in the SS, an organization declared criminal by the judgment of the International Military Tribunal.

Karl Brandt was born 8 January 1904 at Muehlhausen, Alsace, then a portion of Germany, studied medicine, and passed his medical examination in 1928. He joined the National Socialist Party in January 1932, and became a member of the SA in 1933. He became a member of the Allgemeine-SS in July 1934 and was appointed Untersturmfuehrer on the day he joined that organization. During the summer of 1934 he became Hitler's "Escort Physician"--as he describes the office.

He was promoted to the grade of Obersturmfuehrer in the Allgemeine-SS on 1 January 1935; and in 1936 was placed as deferred in order that in case of war he might be free to serve on the staff of the Reich Chancellery in Hitler's Headquarters. During the month of April 1939 Karl Brandt was promoted to the rank of Obersturmbannfuehrer in the Allgemeine-SS. In 1940 he was transferred from the Allgemeine-SS to the Waffen-SS, in which commissions were equivalent to those of the Army. On 30 January 1943, he received a grade equivalent to that of Major General in the Waffen-SS, and on 20 April 1944 was promoted to the grade of Lieutenant General in that organization. Having at some previous date been relieved as Hitler's escort physician, he was again appointed as such in the fall of 1944. On 16 April 1945 he was arrested by the Gestapo, and the next day was condemned to death by a court at Berlin. He was released from arrest by order of the provisional government under Goenitz on 2 May 1945. On 23 May 1945 he was placed under arrest by the British authorities.

By decree bearing date 28 July 1947, signed by Hitler, Keitel

and Lammers, Karl Brandt was invested with high authority over the medical services, military and civilian, in Germany. Paragraphs 3 and 4 of this decree, referring to Karl Brandt, read as follows:

"3. I empower Professor Dr. Karl Brandt, subordinate only to me personally and receiving his instructions directly from me, to carry out special tasks and negotiations to readjust the requirements for doctors, hospitals, medical supplies, etc., between the military and the civilian sectors of the Health and Medical Services.

"4. My plenipotentiary for Health and Medical Services is to be kept informed about the fundamental events in the medical Service of the Wehrmacht and in the Civilian Health Service. He is authorized to intervene in a responsible manner."

By decree bearing date 5 September 1943, signed by Hitler and Lammers, Brandt's authority was strengthened. This decree reads as follows:

"In amplification of my decree concerning the Medical and Health Services of 28 July 1942 (RGK. I P. 515) I order:

"The plenipotentiary for the Medical and Health Services, General Commissioner Professor Dr. Wd. Brandt, is charged with centrally coordinating and directing the problems and activities of the entire Medical and Health Services according to instructions. In this sense this order applies also to the field of Medical Science and Research, as well as to the organizational institutions concerned with the manufacture and distribution of medical material.

"The plenipotentiary for the Medical and Health Services is authorized to appoint and commission special deputies for his spheres of action."

By further decree bearing date 25 August 1944, signed by Hitler, Lammers, Bormann, and Weitel, Karl Brandt received further authority.

This decree reads:

"I hereby appoint the General Commissioner for Medical and Health matters, Professor Dr. Brandt, Reich Commissioner for Sanitation and Health as

well, for the duration of this war. In this capacity his office ranks as highest Reich authority.

"The Reich Commissioner for Medical and Health Services is authorized to issue instructions to the offices and organizations of the State, Party and Wehrmacht, which are concerned with the problems of the Medical and Health Services."

Prosecution Exhibit M5, a letter bearing date at Munich, 9 January 1943, signed by Conti and marked "Strictly Confidential", directed to the Leaders of Public Health and Offices of the National Socialist German Workers' Party, refers to a decree of the Fuehrer on "Suspending the Pledge to Secrecy in Special Cases." The letter continues:

"For your strictly confidential information I am sending attached Fuehrer decree and the circular letter I am writing on that subject to the heads of the medical chambers."

Another portion of the exhibit consists of a copy of Conti's letter, also bearing date 9 January 1943, to the heads of the medical chambers, and reads as follows:

"Strictly Confidential.

"Subject: Fuehrer decree on suspension of pledge to secrecy in special cases.

"Gentlemen:

"I am sending you enclosed a Fuehrer decree which I received from Professor Dr. Bracht...

"Communications having bearing on the Fuehrer decree should be directed to the following address: Professor Doctor Karl Bracht, Personal Attention, Berlin 8-3, Reich Chancellery.

"It is left to the discretion of the physician who is handling the case whether he wishes to acquaint the patient with the information himself."

Hitler's decree, bearing date 23 December 1942, reads as follows:

"I not only relieve physicians, medical practitioners and dentists of their pledge to secrecy towards my Commissioner-General Professor Dr. Med. Karl Brandt, but I place upon them the binding obligation to advise him - for my own information - immediately after a final diagnosis has established a serious disease, or a disease of illboding character, with a personality holding a leading position or a position of responsibility in the State, the Party, the Wehrmacht, in Industry, and so forth."

Concerning this matter, Karl Brandt testified that the decree "in special cases" relieved German physicians from one of the generally accepted principles of medical practice.

From the year 1942 to the end of the war Karl Brandt was a member of the Reich Research Council and was also a member of the Presidential Council of that body.

Karl Brandt, then, finally reached a position authorizing him to issue instructions to all the medical services of the State, Party, and Wehrmacht concerning medical problems (Hitler Decree bearing date 25 August 1944). The above decrees of Hitler disclose his great reliance upon Karl Brandt and the high degree of personal and professional confidence which Hitler reposed in him.

It may be noted that by the service regulation governing the Chief of the Medical Services of the Wehrmacht, issued by Keitel 7 August 1944, the chief of those medical services was required to pay due regard to the general rules of the Fuehrer's Commissioner General for Medical and Health Departments. The regulation contained the following:

"3. The Chief of the Medical Services of the Wehrmacht will inform the Fuehrer's Commissioner General about basic events in the field of the Medical Services of the Wehrmacht."

By a pre-trial affidavit made by the defendant Handloser and put in evidence by the Prosecution, Handloser makes the statement

that Karl Brandt was his "immediate superior in medical affairs."

SPLENILANTHE EXPERIMENTS:

Cert. in Splenilantide experiments were conducted at Ravensbrück for a period of about a year prior to August 1943. These experiments were carried on by the defendants Gebhardt, Fischer, and Oberhauser -- Gebhardt being in charge of the project. At the third meeting of the consulting physicians of the Wehrmacht held at the Military Medical Academy in Berlin from 24 to 25 May 1943, Gebhardt and Fischer made a complete report concerning these experiments. Karl Brandt was present and heard the reports. Gebhardt testified that he made a full statement concerning what he had done, stating that experiments had been carried out on human beings. The evidence is convincing that statements were also made that the persons experimented upon were concentration camp inmates. It was stated that 75 persons had been experimented upon, that the subjects had been deliberately infected, and that different drugs had been used in treating the infections to determine their respective efficacy. It was also stated that three of the subjects died. It nowhere appears that Karl Brandt made any objection to such experiments or that he made any investigation whatever concerning the experiments reported upon, or to gain any information as to whether other human subjects would be subjected to experiments in the future. Had he made the slightest investigation, he could have ascertained that such experiments were being conducted on non-German nationals, without their consent, and in flagrant disregard of their personal rights; and that such experiments were planned for the future.

In the medical field Karl Brandt held a position of the highest rank directly under Hitler. He was in a position to intervene with authority on all medical matters; indeed, it appears that such was his positive duty. It does not appear that at any time he took any steps to check medical experiments upon human subjects. During the war he visited several concentration camps. Occupying the position he did, and being a physician of ability and experience, the duty rested upon him to

make some adequate investigation concerning the medical experiments which he knew had been, were being, and doubtless would continue to be, conducted in the concentration camps.

EPIDEMIC JAUNDICE EXPERIMENTS:

Karl Brandt is charged with criminal responsibility for experiments conducted for the purpose of discovering an effective vaccine to bring about immunity from Epidemic Jaundice. Grewitz, by letter dated 1 June 1943, wrote Himmler stating that Karl Brandt had requested his assistance in the matter of research on the causes of Epidemic Jaundice. Grewitz stated that Karl Brandt had interested himself in this research and desired that prisoners be placed at his disposal. The letter further stated that up to that date experiments had been made only on animals, but that it had become necessary to pursue the matter further by inoculating human beings with virus cultures. The letter stated that deaths must be anticipated, and that eight

prisoners who had been condemned to death were needed for the experiments at the hospital of the concentration camp at Sachsenhausen. Under date of 16 June 1943 Himmler acknowledged the letter from Grawitz and directed that eight criminals in Auschwitz, Jews of the Polish resistance movement condemned to death, should be used for experiments which should be conducted by Dr. Doehm at Sachsenhausen. Karl Brandt's knowledge of experiments on non-German nationals is clearly shown by the foregoing.

LOST (MUSTARD) GAS EXPERIMENTS:

It is clear from the record that experiments with lost gas were conducted on concentration camp inmates throughout the period covered by the indictment. The evidence is that over 200 concentration camp inmates, Russians, Poles, Czechs and Germans, were used as experimental subjects. At least 50 of these subjects, most of whom were non-volunteers, died as a direct or indirect result of the treatment received.

Karl Brandt knew of the fact that such experiments were being conducted. The evidence is to the effect that he knew of lost gas experiments conducted by Sickerbach at Strasbourg during the fall of 1943, in which Russian prisoners were apparently used as subjects some of whom died.

A letter written by the defendant Sievers to the defendant Rudolf Brandt, dated 11 April 1944, points to the fact that Karl Brandt knew of still other such experiments. The letter states, that in accordance with instructions he, Sievers, had contacted Karl Brandt, at Recknitz, and had reported to him concerning the activities of a certain Dr. Hirt, who the evidence shows had been experimenting with lost gas upon concentration camp inmates at Hatzweiler. In the letter, Sievers states, further, that Karl Brandt had told him that he would be in Strasbourg in April and would then discuss details with Dr. Hirt.

Knowledge of the conduct of at least some of the experiments was confirmed by Karl Brandt when he testified in his own behalf. He

stated that pursuant to competent authority he had engaged in studies concerning defense measures against poison gas. He admitted receiving a report from Hirt, and that one reading the report could reach the conclusion that human beings had been experimented upon in connection with injuries from lost gas.

FREEZING, MALARIA, BONE, MUSCLE AND NERVE REGENERATION AND BONE TRANSPLANTATION, SEA WATER, STERILIZATION, AND TYPHUS, EXPERIMENTS:

The evidence does not show beyond a reasonable doubt that Karl Brandt is criminally responsible on account of the experiments with which he is charged under these specifications.

The defendant Karl Brandt certainly knew that medical experiments were carried out in concentration camps upon human subjects, that the experiments caused suffering, injury, and death. By letter bearing date 26 January 1943 Karl Brandt wrote to Goebbels at the Fuehrer's (Hitler's) headquarters asking if it were possible to carry out "nutritional experiments" in concentration camps. The nature of the desired experiments does not appear, nor does the evidence show, whether or not such experiments were ever made. The letter, however, indicates Brandt's knowledge of the fact that human subjects could be made available for experimentation.

Defendant Rudolf Brandt, by letter dated 4 September 1944, wrote Buehert, evidently a member of Himmler's staff, stating that Karl Brandt had telephoned and requested that Himmler direct that 10 prisoners from Oranienburg should be made available as of the next day for two days to test a certain drug. The letter stated that the prisoners would not be injured by the test.

It appears from an official note filed by Kliwka, of the Army Medical Inspectorate, dated 23 February 1944 referring to a conversation with the defendant Blome on that date, that experiments concerning biological warfare connected with plant parasites, etc., had been made; that up to that date no experiments had been conducted in the field of human medicine; but that such experiments were necessary and were in

contemplation. The memorandum continues:

"Field Marshal Keitel has given permission to build; Reichsfuehrer-SS and Generalarzt Professor Brandt have assured him of vast support. By request of Field Marshal Keitel the Armed Forces are not to have a responsible share in the experiments, since experiments will also be conducted on human beings."

It is significant that Hitler's Chief of Staff should deem it advisable to direct that the Wehrmacht should have nothing to do with experiments on human subjects.

EUTHANASIA:

Defendant Karl Brandt is charged under Counts Two and Three of the indictment with criminal activities in connection with the Euthanasia program of the German Reich, in the course of which thousands of human beings, including nationals of German-occupied countries, were killed between 1 September 1939 and April 1945.

On his own letterhead Hitler, at Berlin, 1 September 1939, signed a secret order reading as follows:

"Reichsleiter Bouhler and Dr. Brandt, I.D. are charged with the responsibility of enlarging the authority of certain physicians to be designated by name in such a manner that persons who, according to human judgment, are incurable can, upon a most careful diagnosis of their condition of sickness, be accorded a merciful death."

Bouhler was holding a high office in the Interior. He was not a physician.

The foregoing order was not based on any previously existing German law; and the only authority for the execution of euthanasia was the secret order issued by Hitler.

The evidence shows that Bouhler and Karl Brandt, who were jointly charged with the administration of euthanasia, entered upon the duties assigned them in connection with the setting up of processes for carrying out the order. A budget was adopted; the method of determining candidates for euthanasia was established; a patients' transport corporation was organized to convey the selected patients to the gassing chambers. Questionnaires were prepared which were forwarded to the heads

of mental institutions, one questionnaire to be accomplished concerning each inmate and then returned to the Ministry of the Interior. At the Ministry the completed questionnaires were examined by so-called experts, who registered their professional opinions thereon, returned them to the appropriate office for final examination, and orders were issued for those patients who by this process were finally selected for extermination. Thereafter the condemned patients were gathered at collection points, from whence they were transported to euthanasia stations and killed by gassing.

Utmost secrecy was demanded of the executioners throughout the entire procedure. Persons actively concerned in the program were required to subscribe a written oath of secrecy and were warned that violation of that oath would result in most serious personal consequences. The consent of the relatives of the "incapables" was not even obtained; the question of secrecy being deemed so important.

Shortly after the commencement of operations for the disposal of "incapables", the program was extended to Jews, and then to concentration camp inmates. In this latter phase of the program, prisoners deemed by the examining doctors to be unfit or useless for labor were ruthlessly weeded out and sent to the extermination stations in great numbers.

Karl Brandt maintains that he is not implicated in the extermination of Jews or of concentration camp inmates; that his official responsibility for euthanasia ceased at the close of the summer of 1941, at which time euthanasia procedures against "incapables" were terminated by order of Hitler.

It is difficult to believe this assertion, but even if it be true, we cannot understand how this fact would aid the defendant. The evidence is conclusive that almost at the outset of the program non-German nationals were selected for euthanasia and exterminated. Needless to say, these persons did not voluntarily consent to become the subjects of this procedure.

Karl Brandt admits that after he had disposed of the medical decisions required to be made by him with regard to the initial program which he maintains was valid, he did not follow the program further but left the administrative details of execution to Bouhler. If this be true, his failure to follow up a program for which he was charged with special responsibility constituted the gravest breach of duty. A discharge of that duty would have easily revealed what now is so manifestly evident from the record: That whatever may have been the original aim of the program, its purposes were prostituted by men for whom Brandt was responsible, and great numbers of non-German nationals were exterminated under its authority.

We have no doubt but that Karl Brandt -- as he himself testified -- is a sincere believer in the administration of euthanasia to persons hopelessly ill, whose lives are burdensome to themselves and an expense to the state or to their families. The abstract proposition of whether or not euthanasia is justified in certain cases of the class referred to, is no concern of this Tribunal. Whether or not a state may validly enact legislation which imposes euthanasia upon certain classes of its citizens, is likewise a question which does not enter into the issues. Assuming that it may do so, the Family of Nations is not obliged to give recognition to such legislation when it manifestly gives legitimacy to plain murder and torture of defenseless and powerless human beings of other nations.

The evidence is conclusive that persons were included in the program who were non-German nationals. The dereliction of the defendant Brandt contributed to their extermination. That is enough to require this Tribunal to find that he is criminally responsible in the program.

We find that Karl Brandt was responsible for, aided and abetted, took a consenting part in, and was connected with plans and enterprises involving medical experiments conducted on non-German nationals against their consent, and in other atrocities, in the course of which murders, brutalities, cruelties, tortures and other inhuman acts were committed.

To the extent that these criminal acts did not constitute War Crimes they constituted Crimes against Humanity.

MEMBERSHIP IN ORIGINAL ORGANIZATION:

Under Count Four of the Indictment Karl Brandt is charged with being a member of an organization declared criminal by the Judgment of the International Military Tribunal, namely, the SS. The evidence shows that Karl Brandt became a member of the SS in July 1934 and remained in this organization at least until April 1945. As a member of the SS he was criminally implicated in the commission of War Crimes and Crimes against Humanity, as charged under Counts Two and Three of the Indictment.

CONCLUSION

Military Tribunal I finds and adjudge the defendant Karl Brandt guilty, under Counts Two, Three, and Four, of the Indictment.

The Tribunal will now be in recess for a few minutes.

(A recess was taken.)

THE PRESIDENT: Judge Sebring will continue with the reading of the judgment.

JUDGE SEBRING: The Case of

HANDLOSER

Under Counts Two and Three of the Indictment the defendant Handloser is charged with special responsibility for, and participation in, High Altitude, Typhoid, Malaria, Lethal (Mustard) Gas, Sulfenilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea Water, Epidemic Jaundice, and Typhus experiments.

The charge of participation in the High Altitude experiments has been dropped by the Prosecution, and hence will not be considered further.

Handloser was a professional soldier, having been commissioned in the Medical Department of the German Army in 1910. During the first World War he rose to the position of Commanding Officer of a division medical unit, and on 1 September 1939 he was appointed Chief Medical Officer of the 14th German Army. After service in the field, on 5 November 1940 he was appointed Deputy Army Medical Inspector. He became Army Medical Inspector on 1 January 1941, and the following April was given the additional appointment of Chief Medical Officer of the Field Forces, holding both positions until 28 July 1942, when he became Chief of the Wehrmacht Medical Service. He retained also his other appointment and performed the duties of both positions. He was retained in his position as Chief of the Wehrmacht Medical Services on 1 September 1944, but relieved of the duties pertaining to the other office which he had theretofore held; - he having exercised the functions of both offices until the last mentioned. His professional career is more particularly described above.

Handloser states that prior to his last appointment in 1940 he was authorized to issue "instructions", but not orders - testifies that after his latest appointment he had authority to issue orders to the

chiefs of the medical services of all branches of the Wehrmacht. He also had jurisdiction over scientific medical institutes, etc., as designated by the service regulations promulgated at the time of his last appointment. While the chief medical officers of the Army, Navy, and Luftwaffe were under their appropriate military superiors, Hendlöser had authority to coordinate the activities of all the Wehrmacht medical services and to establish their coordinated action. As to the Waffen-SS, his authority extended only to such units of that organization as were attached to and made part of the Wehrmacht.

Hendlöser testified that the utilization of medical material and personnel were, insofar as the Wehrmacht was concerned, within his jurisdiction after the entry of the decree of 25 July 1942, and that upon occasion he called meetings of the Chief Medical Officers of the Wehrmacht -- specialists in appropriate fields of medicine, in an effort to avoid duplication of certain research problems in connection with epidemic typhus, paratyphus, and cholera.

As Army Medical Inspector he was also ex officio president of the Scientific Senate, but testified that this body did not meet after 1942. As an Army physician he denied any special knowledge concerning scientific problems peculiarly affecting the Navy or the Luftwaffe; but on an organization chart prepared by him and received in evidence as Prosecution Exhibit 3 he is shown as subordinated to Karl Brandt and as Chief of the Medical Service of the Wehrmacht occupying the position of superior over the Army Medical Service and the chiefs of the Medical Services of the Navy and Luftwaffe and certain other subordinate agencies reporting to the Wehrmacht. The chart also indicates his authority over the chief of the Medical Office of the Waffen-SS and commanders of the Waffen-SS when attached to the Wehrmacht.

It appears that Hendlöser had much to do in connection with the calling of meetings of the "Consulting Physicians"; that he designated some of the subjects to be discussed at these meetings; and that his subordinate,

arranged the details.

At the second meeting of consulting surgeons held 30 November to 3 December 1942 at the Military Medical Academy, he addressed those present (referring to the meeting as "This second work conference East"), observing that representatives of the three branches of the Wehrmacht, of the Wehrmacht-SS and Police, of the Labor Service, and the Organization Todt, were also present. He called attention to the presence of Conti, Head of the Medical Services in the Civilian Sector.

At the fourth meeting of Consulting Physicians held at Eichenlychen, 16 to 18 Dec 1942, Karl Brandt - in addressing the meeting - said that Handloser, a soldier and a physician, was "responsible for the use and the performance of our medical officers".

Schreiber, until 30 May 1943 a close subordinate of Handloser in his capacity of Chief Medical Inspector, was a member of the Reich Research Council, having particular regard to the control of epidemics as his special field. Schreiber frequently reported to Handloser, with whom he had worked for some years.

PROCEEDINGS OF MEETINGS:

Professor Dr. Holzlochner, who with Drs. Ficke and Rescher performed frequent experiments on concentration camp inmates at Dachau, made reports on at least two occasions to groups of Army physicians concerning cold and frost problems. The first such report was made at a meeting held on 23 to 27 October 1942, which was called to consider problems concerning cold. Schreiber, who held a responsible position under Handloser from 1 April 1942 to 31 May 1943, was present at this meeting, as was Graemer, Head of the Mountain Medical School in the Army at St. Johann, which was also under Handloser's jurisdiction. During the meeting and after Holzlochner had made his report, Rescher also made statements before the meeting concerning these experiments, from which it was obvious that statements contained in the reports were based upon observations made by experimentation on human beings. From the two reports it was clear that

concentration camp inmates had been experimented upon and that some deaths had resulted.

Holslochner was invited to lecture again upon this subject at the second meeting of the Consulting Physicians of the Wehrmacht, held 30 November to 3 December 1942, at the Military Medical Academy at Berlin. H. Wigger heard this talk by Holslochner and testified that the matter of cold and freezing was one of the most important problems to the Army.

We think it manifestly clear from the evidence dealing with freezing that Dr. Blosser had actual knowledge that such experiments had been conducted upon inmates at Dachau Concentration Camp, during the course of which suffering and deaths had resulted to the experimental subjects.

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Reif/loer is charged with participation in the Sulfur II-side experiments conducted by the defendant Eckhardt. These experiments were conducted at Ravensbrueck Concentration Camp during a period extending from 20 July 1942 to August 1943, upon concentration camp inmates without their consent. While these experiments were still in progress Eckhardt was invited to present a report on his research findings at the 51st meeting.

of the Consulting Physicians held on 18 and 19 May 1943, at the Military Medical Academy in Berlin. Handloser was present at that meeting; in fact, he had addressed the meeting prior to Gebhardt's giving his report.

As stated elsewhere, Gebhardt made a frank and candid report of what he had been doing at Ravensbruck; honestly telling the group that his experimental subjects were not volunteers, but were concentration camp inmates condemned to death, who had been given the hope of reduction of sentence should they survive the experiments. By means of charts to illustrate his lecture, he made it clear that deaths had occurred among the human subjects. When on the witness stand the defendant Gebhardt testified that prior to the meeting of Consulting Physicians, he had discussed with either Schreiber or the defendant Postock the subject matter of the lecture to be given, and that at that time Schreiber had stated that he had received data concerning the experiments through official channels.

At that time Schreiber was a direct subordinate of the defendant Handloser, and we think it may be fairly assumed that Schreiber's knowledge was the knowledge of Handloser. However, be that as it may, the evidence is clear that Handloser heard the lecture by Gebhardt, as well as a subsequent lecture on the same subject matter given by the defendant Fischer. There can be no question, therefore, but that when Handloser came away from the meeting he was fully informed of the fact that medical experiments were being conducted in Ravensbruck Concentration Camp with inmates who were non-volunteers. Moreover, he knew that deaths had occurred among the experimental subjects.

After the meeting of consulting physicians had ended, Gebhardt returned to Ravensbruck and conducted several more series of sulfenilamide experiments. The subjects used for the later experiments were Polish women who had been condemned to Ravensbruck without trial, and who did not give their consent to act as experimental subjects. Three of these were killed by the experiments.

TYPHUS EXPERIMENTS:

Under Counts Two and Three of the Indictment Handloser is charged with special responsibility for, and participation in, Typhus experiments conducted in the Buchenwald Concentration Camp which were supervised by a certain Dr. Ding, and like experiments conducted in the Mauthausen Concentration Camp by a certain Dr. Haagen. As shown elsewhere in the Judgment, these experiments were unlawful and resulted in deaths of non-German nationals.

There can be no question but that in 1941 Typhus was a potential menace to the German Army and to many German civilians. The use of an adequate Typhus Vaccine was therefore a matter of prime importance. The distribution of vaccines to the Wehrmacht was within the control of Handloser. In the exercise of his functions he was also interested in Typhus vaccine production.

The Typhus and Virus Institutes of the GFW at Cracow and Lemberg were engaged in the production of the Weigl vaccine from the intestines of lice. This vaccine was thought to be effective, but the production procedure was complicated and expensive; hence, sufficient quantities of this vaccine could not be furnished. Another vaccine - the so-called Cox-Haagen-Gildemeister vaccine, produced from egg yolk cultures - could be quickly produced in large quantities, but its protective qualities had not been sufficiently demonstrated.

Evidence is before the Tribunal that the general problem was discussed at a meeting held in Berlin, 29 December 1941, attended by Dr. Gleber of the Ministry of Interior; Gildemeister; Dr. Scholtz, a subordinate of Handloser; two physicians of the "governing body of the Government General;" and three representatives of the Behring Works. It is stated in the minutes of this conference that:

"The vaccine which is presently being produced by the Behring Works from chicken eggs shall be tested for its effectiveness in an experiment."

For the purpose above referred to, Dr. Vernitz of the Behring Works would contact Dr. Vrugowsky. The minutes of the meeting were prepared

by Sieber, under date 4 January 1942.

A copy of the minutes of the meeting last referred to was forwarded to the Army Medical Inspectorate at Berlin. It thus appears that a representative of Handloser's office, Scholts, attended the meeting, and that a copy of the minutes was forwarded to the Army Medical Inspectorate.

There is also evidence that on the same day a conference was held between the defendant Handloser; Conti of the Ministry of Interior; Reiter of the Health Department of the Reich; Gildemeister of the Robert Koch Institute; and the defendant Wugowsky, at which time it was decided to establish a research station at Buchenwald Concentration Camp to test the efficacy of the egg-yolk, and other vaccines on concentration camp inmates. As a result of the conference an experimental station was established at Buchenwald under the direction of Dr. Ding, with the defendant Hoven acting as his deputy.

Inasmuch as some of this information comes from Prosecution Exhibit 287, referred to as the "Ding Diary", a discussion of the document is now appropriate.

Dr. Ding (who later changed his name to Schuler) was a very ambitious man who was apparently willing to engage in any professional activity which he thought might further his medical career. He gladly seized upon the opportunity to conduct experiments on concentration camp inmates in connection with the vaccine study.

Every German officer holding a position comparable to that held by Dr. Ding was required to keep a journal or diary showing his official activities. It appears that Ding kept two diaries. Ding's personal diary containing official and personal entries and work reports has disappeared; his official log or journal concerning his work at Buchenwald is the document in evidence. This diary was kept by one Eugen Hogen, an inmate at Buchenwald. He made the actual entries and Ding verified and signed them.

Hogen, an Austrian subject, testified for the Prosecution. He

learn from his testimony that he was a former newspaper editor and held other highly responsible positions. He was sent by the German authorities to Buchenwald in 1939 as a political prisoner. In April 1943 he was assigned to Ding as a clerk or assistant. For many months prior to that time, however, he had been on extremely friendly terms with Ding and as a consequence was completely familiar with Ding's operations. Indeed, so close was the attachment that during the first half of the year 1942 Ding had dictated the first portion of the diary which is in evidence, and Kogon had transcribed it. After officially becoming Ding's assistant in 1943 all correspondence of every nature with which Ding was concerned passed through the hands of Kogon.

The diary came into Kagon's possession at the breaking up of the camp, and remained in his possession, as he testified, until he delivered it to the Office of Chief of Counsel for War Crimes at Nurnberg.

It is manifest that the entries in the diary were often not made on the day they bear date; but this does not mean that it has no probative value. Almost every entry in the diary is personally signed by Max. Time and again the entries in the diary have been corroborated by other credible evidence. The defendants themselves who were familiar with operations at Buchenwald have confirmed the entries in important essential particulars. We consider the diary as constituting evidence of considerable probative value, and shall give to the entries such consideration as under all circumstances they are entitled to receive.

The first entry in the Ding Diary, under date of 29 December 1961, reads as follows:

"Conference between Army Sanitation Inspection, General Chief Surgeon Professor Dr. Winkler; State Secretary for the Department of Health of the Reich SS Gruppenfuhrer Dr. GUTH; President Professor REIER of the Health Department of the Reich; President Professor GILBERT of the Robert Koch Institute (Reich Institution to Combat Contagious Diseases) and SS Standartenfuhrer and Lecturer (logent) Dr. MURPHY of the Institute of Hygiene, Waffen-SS, Berlin.

"It has been established that the need exists, to test the efficiency of, and resistance of the human body to, the spotted fever serum extracted from egg yolks. Since tests on animals are not of sufficient value, tests on human beings must be carried out."

This entry preceded by only a few days the actual commencement of the experiments on concentration camp inmates to determine the efficiency of the egg yolk vaccine.

It seems certain that the foregoing entry in the Ding Diary was written or rewritten at some date later than that which it bears, but the entry may be accepted as evidence of probative value to the fact that it was agreed by some persons in authority that experiments with vaccine prepared from egg yolks be made on concentration camp inmates at Buchenwald. The next entry in the diary bears date 2 January 1942, and reads as follows:

"The concentration camp Buchenwald is chosen for testing the spotted fever serum. SS Hauptsturmfuehrer Ding is charged with these facts."

Handloser testified that many conferences concerning typhus vaccine took place and that he was interested in the testing of chicken-egg vaccine "on a sufficient number of persons in a certain vicinity, that is, within an area where typhus had already occurred or there was imminent danger existing." He also testified that during the summer of 1941 he met "Kugowsky, who was recommended to him by Schreiber, Handloser's subordinate. He also testified that he discussed the matter of the chicken-egg vaccines with Gildemeister and Genti. Handloser testified that he was present at many conferences, both at the front and in rear echelons, where such matters were discussed. "Kugowsky, in a letter dated 5 May 1942, reported to Eyer (who was a subordinate of Handloser) of the Typhus and Vaccine Institute of the High Command at Grosse, describing the results of the first series of experiments carried out in Buchenwald. The experiments covered both the Weigl and egg-yolk vaccines. This report called attention to the fact that two experimental subjects had died.

An entry in the Ding Diary dated 8 February 1943 states that Dr. Eyer and Dr. Schmidt, a hygienist on the staff of the Medical Inspectorate, visited the Typhus and Virus Institute at Buchenwald.

Schmidt, a subordinate of Handloser from 1942 until August 1944, stated

that he and Eyer had visited Buchenwald. He testified that his visit was concerned only with yellow fever vaccine tests which were being carried out at that station. This statement by the witness is not convincing. From the Ding Diary it appears that infected lice were received by Ding prior to 30 November 1942. If this is correct, these lice could have come only from an institute under control of the Army over which Handloser had jurisdiction.

Ding reported on his activities at the meeting of the Consulting Surgeons of the Wehrmacht held in May 1943 in Berlin. Handloser was present at that meeting but may not have heard the report, the report having been made to the Hygiene Section, which was presided over by Schreiber, Handloser's subordinate. Defendant Rose, having heard the report, openly objected to the character of the experiments carried out at Buchenwald. Schreiber, then, had full knowledge of the nature of the experiments there carried on. Rose's vigorous objection was doubtless a subject of general interest.

Handloser testified that on at least two occasions he discussed with Krugowsky matters connected with vaccines against Typhoid, Typhus and other diseases. He stated that he was unable to fix the dates of these conferences.

The entries in the Ding Diary clearly indicate an effective liaison between the Army Medical Inspectorate and the experiments which Ding was conducting at Buchenwald. There is also credible evidence that the Inspectorate was in formed of medical research carried on by the Luftwaffe. These experiments at Buchenwald continued after Handloser had gained actual knowledge of the fact that concentration camp inmates had been killed at Dachau as the result of freezing; and that inmates at Ravensbruck had died as victims of the sulfanilamide experiments conducted by Gebhardt and Fischer. Yet with this knowledge Handloser in his superior medical position made no effort to investigate the situation of the human subjects or to exercise any proper degree of control over those conducting experiments within his field of authority and competence.

Had the slightest inquiry been made the facts would have revealed that in vaccine experiments already conducted at Buchenwald, deaths had occurred--both as a result of artificial infections by the lice which had been imported from the Typhus and Virus Institutes of the OHR at Gracow or Iasberg, or from infections by a virulent virus given to subjects after they had first been vaccinated with either the Weigl, Cox-Haagen-Gildemeister, or other vaccines, whose efficacy was being tested. Had this step been taken, and had Handloser exercised his authority, later deaths would have been prevented in these particular experiments which were originally set in motion through the offices of the Medical Inspectorate and which were being conducted for the benefit of the German armed forces.

These deaths not only occurred with German nationals, but also among non-German nationals who had not consented to becoming experimental subjects.

OTHER EXPERIMENTS:

The defendant Handloser is also charged with special responsibility for, and participation in, Malaria, Lost Gas, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sea Water, and Epidemic Jaundice, Experiments. In our view the evidence is insufficient to show any criminal connection of the defendant Handloser with regard to these experiments.

The law of war imposes on a military officer in a position of command an affirmative duty to take such steps as are within his power and appropriate to the circumstances to control those under his command for the prevention of acts which are violations of the law of war. The reason for the rule is plain and understandable. As is pointed out in a decision rendered by the Supreme Court of the United States, entitled *Application of Yamashita*, reported on 66 Supreme Court, Pages 340-347, 1945:

"It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian

populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates."

What has been said in this decision applies peculiarly to the case of Handloser.

In connection with Handloser's responsibility for unlawful experiments upon human beings, the evidence is conclusive that with knowledge of the frequent use of non-German nationals as human experimental subjects, he failed to exercise any proper degree of control over those subordinated to him who were implicated in medical experiments coming within his official sphere of competence. This was a duty which clearly devolved upon him by virtue of his official position. Had he exercised his responsibility great numbers of non-German nationals would have been saved from murder. To the extent that the crimes committed by or under his authority were not war crimes they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Siegfried Handloser guilty, under Counts Two and Three of the Indictment.

THE PRESIDENT: Judge Crawford will continue with the reading of the indictment.

JUDGE CRAWFORD:

ROSTOCK

The defendant Rostock is charged under Counts Two and Three of the Indictment with special responsibility for, and participation in, Malaria, Lethal (Mustard) Gas, Sulfonilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sex Water, Epidemic Jaundice, and Spotted Fever experiments.

Rostock was a physician of recognized ability. From 1933 to 1941 he occupied, successively, the positions of Senior Surgeon of the Surgical Clinic in Berlin, Professor of Surgery of the University of Berlin, and Deputy Director of the University Clinic. In 1941 he was

appointed Director of the Surgical Clinic, and in 1942 he became Dean of the Medical Faculty of the University of Berlin. Prior to the war, he had joined the NSDAP, and in 1939 he was assigned to military duty as a Consulting Physician. In 1942 he was appointed Consulting Surgeon to the Army Medical Inspectorate and was subordinate to the Military Medical Academy in Berlin. He attained the rank of Brigadier General, Medical Department (Reserve). In 1943 he was appointed Chief of the Office for Medical Science and Research, a department under the supervision of defendant Karl Brandt, in which position Postock remained until the end of the war. From the time he received the last-mentioned appointment, Postock acted as Brandt's deputy on the Reich Research Council.

As Karl Brandt's deputy, Postock was his agent in the field of medical science and research--Postock being charged with the duty of coordinating and directing problems and activities concerning the medical health service insofar as science and research were concerned. Postock was informed concerning medical research conducted by the several branches of the Wehrmacht. As head of the Office for Science and Research, he assigned research problems and designated some as "urgent". It was his duty to avoid duplication of work in scientific research and to decide whether or not a suggested problem was worthy of a research assignment. It is clear that Postock and Karl Brandt were intimate friends of years' standing.

The Prosecution does not contend that Postock personally participated in criminal experiments. It vigorously argues, however, that -- with full knowledge that concentration camp inmates were being experimented upon -- he continued to function upon research assignments concerning scientific investigations, the result of which would probably further experiments upon human beings. The Prosecution then argues that his knowledge concerning these matters, considered together with the position of authority which he occupied in connection with scientific research and the fact that he failed to exercise his authority in an attempt to stop or check criminal experiments, renders him guilty as charged.

In this connection the Prosecution relies upon its Exhibit 457, a document which bears date at Berlin, 14 September 1944. It is headed, "Commissioner for Medical and Health Matters," followed by "The Delegate for Science and Research." Below appears:

"List of medical institutes working on problems of research which were designated as urgent by the discussion on research on 26 August 1944 in Beelitz.

"(Summary according to the 650 orders for research submitted to us.)"

The document then contains a list of research assignments numbered "1" to "45." Numbers 42 and 44 read as follows:

"Strassbourg
"42) Hygiene Institute (HIGI) virus research

.....

"44) Anatomical Institute (HIPT) Chemical warfare agents."

The document bears Postock's signature. Five of the problems concern Hepatitis research; and three, Virus research.

It appears from the evidence that Postock's duties included the avoidance of duplication in the distribution of assignments for medical research. If the head of the Medical Department of a branch of the Wehrmacht assigned to some particular physician or institute a particular scientific or medical problem, a copy of the assignment would be forwarded to Postock, who would then coordinate the matter by ascertaining whether or not that assignment was being worked on by some other agency or whether it would lead to worthwhile results. The classification as "urgent" the 45 of the 650 orders for research does not appear; but it may be assumed that Postock approved that classification.

Doubtless Postock knew that experiments on concentration camp inmates were being conducted. He presided over the meeting of surgeons held in May 1943, and there heard statements that experimental subjects had been artificially infected. Doubtless he knew that the experiments were dangerous and that further experiments would probably be conducted. However, it does not appear that either Postock or any subordinate of his directed the work done on any assignment concerning criminal experi-

ments. Certain of these experiments were classified as "urgent" as a "discussion on research" as above set forth. Nothing in the designation of any such assignment as appears in Prosecution Exhibit 457 contains on its face anything more than a matter of proper scientific investigation.

The record does not show that the position held by Postock vested in him any authority whatsoever either then as above stated. No experiments were conducted by any person or organization which was to the least extent under Postock's control or direction.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Paul Postock is not guilty as charged under the Indictment, and directs that he be released from custody under the Indictment when this Tribunal presently adjourns.

THE PRESENT:

SCHROEDER

The defendant Schroeder is charged under Counts Two and Three of the Indictment with special responsibility for, and participation in, High Altitude, Freezing, Sulfanilamide, Seawater, Epidemic Jaundice, Typhus and other vaccines, and Gas Experiments. The Prosecution has abandoned the charge that he participated in the sulfanilamide experiments and hence that subject will not be considered further.

The defendant served as a medical officer with the infantry during the First World War. In the period prior to 1931 he was attached as medical officer to a number of military units. On 1 January 1931 he was transferred to the Army Medical Inspectorate as a Consultant (referent) on hospital matters and therapeutics with the rank of Oberstarzt (Major). In 1935 Schroeder became Chief of Staff to Generalarzt Rippke in the newly established Medical Department of the Reich Ministry for Aviation. He retained this position after Rippke was made Inspector of the Medical Service of the Luftwaffe in 1937. In February 1940 Schroeder was appointed Air Fleet Physician for Air Fleet II with the rank of Generalstarzt (Major General). On 1 January 1944 he replaced Rippke as Chief of the Medical Service of the Luftwaffe. Simultaneously he was promoted to Generaloberstarzt (Lieutenant General), which was the highest rank obtainable in the medical services. As Chief of the Medical Service of the Luftwaffe, all medical officers of the German Air Force were subordinated directly or indirectly to Schroeder. After he became Chief of the Medical Service of the Luftwaffe his immediate superior was Handloser, who was Chief of the Medical Service of the Wehrmacht.

HIGH ALTITUDE EXPERIMENTS:

The experiments were performed at Dachau Concentration Camp for the benefit of the Luftwaffe during the year 1942. Details of the experiments are discussed in other portions of this Judgment.

During the period from 1941 to the end of 1943 the defendant, Schroeder, in his position as Air Fleet Physician of Air Fleet II was in the operational Zone of Air Fleet II, which comprised the Mediterranean Area. He did not become Chief of the Medical Service of the Luftwaffe until 1 January 1944. There is no evidence that while Air Fleet Physician he exercised or could have exercised any control over experiments then being conducted for the benefit of the Luftwaffe.

EPIDEMIC JAUNDICE EXPERIMENTS:

Schreiber, a member of Handloser's staff, who presided over a conference held in Breslau in June 1944 for the purpose of coordinating jaundice research, assigned groups of physicians to work together on jaundice problems. Dohren, Gutzeit and Haagen were assigned to one of these groups. On 27 June 1944 Haagen, a Luftwaffe officer, wrote his collaborator Kalk, a consultant to Schroeder, asking, "Could you in your official position take the necessary steps to obtain the required experimental subjects?"

The record shows that Haagen subsequently conducted epidemic jaundice experiments on prisoners at Hatzweiler Concentration Camp. There is no evidence, however, to establish Schroeder's criminal connection with these experiments. At most all that can be said for this evidence is that Schroeder may have gained knowledge of the experiments through Kalk, a member of his staff -- but even that fact has not been made plain.

FREEZING EXPERIMENTS:

Freezing experiments were carried out at Dachau Concentration Camp for the benefit of the Luftwaffe, during the year 1943. Details of these experiments are discussed elsewhere in this Judgment.

It is conclusively shown from the evidence dealing with freezing that as early as the year 1943 Schroeder had actual knowledge that such experiments had been conducted upon inmates at Dachau Concentration Camp, during the course of which suffering and deaths had resulted to the experimental subjects.

TYPHUS EXPERIMENTS:

Experiments in connection with typhus were conducted at Schirneck and Natzweiler Concentration Camps during the years 1942, 1943, and 1944. The details of these experiments are discussed elsewhere in this judgment.

The experiments were carried out by a Luftwaffe Medical Officer, Prof. Dr. Haagen. As a medical officer of the Luftwaffe he was subject to Schroeder's orders after the latter became Chief of the Medical Service of the Luftwaffe. The office of Schroeder issued and approved the research assignments pursuant to which these experiments were carried out. It provided the funds for the research. One of the Chief collaborators in the program was the defendant Rose, Consultant to the Chief of the Medical Service of the Luftwaffe.

Correspondence was carried on between Haagen and the Chief of Staff for the defendant Schroeder with reference to whether a typhus epidemic prevailing at Natzweiler was connected in any manner with the vaccine research then being conducted. The office of the Chief of the Medical Service of the Luftwaffe received reports on the experiments from which it could be clearly perceived that vaccine experiments were being performed on concentration camp inmates.

While the experiments were in progress Schroeder admits having visited Haagen at Strasbourg, but denies that he talked with Haagen about the experiments. The defendant's assertion that the experiments were not discussed does not carry conviction.

As has been pointed out in this judgment the law of war imposes on a military officer in a position of command an affirmative duty to take such steps as are within his power and appropriate to the circumstances to control those under his command for the prevention of acts which are violations of the law of war.

This rule is applicable to the case of Schroeder. At the time he became Chief of the Medical Service of the Luftwaffe Schroeder knew of the fact that freezing experiments for the benefit of the Luftwaffe

had been carried out at Dachau Concentration camp by Luftwaffe Medical officers. He knew that through these experiments injury and death had resulted to the experimental subjects. He also knew that during the years 1942 and 1943 typhus vaccine research had been carried out by the Luftwaffe officer, Haagen, for the benefit of the Luftwaffe Medical Service, at Natzweiler and Schirack Concentration Camps — and had he taken the trouble to inquire, he could have known that deaths had occurred as a result of these experiments.

With all this knowledge, or means of knowledge, before him as commanding officer, he blindly approved a continuation of typhus research by Haagen, supported the program, and was furnished reports of its progress, without so much as taking one step to determine the circumstances under which the research had been or was being carried on, to lay down rules for the conduct of present or future research by his subordinates, or to prescribe the conditions under which the concentration camp inmates could be used as experimental subjects.

As was the case with reference to the freezing experiments at Dachau, non-German nationals were used as experimental subjects, none gave their consent, and many suffered injury and death as a result of the experiments.

GAS EXPERIMENTS:

Experiments with various types of poison gas were performed by Luftwaffe Officer Haagen and a Prof. Dr. Hirt in the Natzweiler Concentration Camp. They began in November 1942 and were conducted through the summer of 1944. During this period a great many concentration camp inmates of Russian, Polish and Czech nationality were experimented on with gas, at least 50 of whom died. A certain Oberarzt Wiener, a Staff Physician of the Luftwaffe, worked with Hirt on the gas experiments throughout the period.

We discussed the duty which rests upon a commanding officer to take appropriate measures to control his subordinates, in dealing with the case of Handloser. We shall not repeat what we said there.

Had Schroeder adopted the measures which the law of war imposes upon one in position of command to prevent the actions of his subordinates amounting to violations of the law of war, the deaths of the non-German nationals involved in the gas experiments might well have been prevented.

SEAWATER EXPERIMENTS:

Seawater experiments were conducted on inmates of Dachau Concentration Camp during the late Spring and Summer of 1944. The defendant Schroeder openly admits that these experiments were conducted by his authority. When on the witness stand he related the circumstances under which these experiments were initiated and carried through to completion.

As related by Schroeder the experiment on making seawater drinkable was a problem of great importance. Two methods were available in Germany, each of which to some extent had been previously tried, both on animal and on human subjects. These were known as the Schaefer and the Berkatit processes. Use of the Schaefer Method on seawater produced a satisfactory liquid essentially the same in its effects and as to potability as ordinary pure drinking water.

The Schaefer Process, however, called for quantities of silver which were thought to be unavailable. Use of the Berka process, however, resulted merely in changing the taste of seawater, thus making it more palatable, without at the same time doing away with danger to health and life which always results from consuming considerable quantities of untreated seawater. Material was available for the Berka Process, but Schroeder did not feel that it could be adopted until more was known of the method. At Schroeder's direction, the defendant Becker-Freysong arranged for a conference to be held at the German Air Ministry in May 1944 to discuss the problem. Present at the conference, among others, were Berka and the defendants Becker-Freysong and Schaefer.

There is no doubt that the conference was well informed, and

discussed all current data upon the subject. Such fact appears from the minutes of the meeting, in which it is stated:

"...Captain (Med.) Dr. Becker-Freyse reported on the clinical experiments conducted by Colonel (Med.) Dr. von Sirany, and came to the final conclusion that he did not consider them as being unobjectionable and conclusive enough for a final decision. The Chief of the Medical Service is convinced that, if the Berka method is used damage to health has to be expected not later than 6 days after taking Berkatit, which damage will result in permanent injuries to health and — according to the opinion of M.C.O. (Med.) Dr. Schaefer — will finally result in death after not later than 12 days. External symptoms are to be expected such as dehydration, diarrhea, convulsions, hallucination, and finally death."

It was concluded at this meeting that it would be necessary to perform further seawater experiments upon human beings in order to determine definitely whether or not the Berkatit Method of treating sea water could be safely employed and used in connection with the German war effort. These experiments were planned to be carried on in group series; each of which would require six days, and would be made upon human beings in this order: one group would be supplied only with Berkatit treated sea water; a second group would receive no water of any kind; the fourth group was to be given such water as was generally provided in emergency sea distress kits, then used by German military personnel.

In addition to the first experiment it was agreed that a second experiment should be conducted. The notes of the meeting which deal with the second experimental series read as follows:

"Persons nourished with sea water and Berkatit, and as diet also the emergency sea rations.

"Duration of experiments: 12 days

"Since in the opinion of the Chief of the Medical service, permanent injuries to health, that is, the death of the experimental subjects,

has to be expected, as experimental subjects such persons should be used as will be put at the disposal by the Reichsfuehrer SS."

On 7 June 1944 Schroeder wrote to Himmler through Grawitz asking for concentration camp inmates to be used as subjects in the sea water experiments, which letter reads in part as follows:

"Highly Respected Reich Minister:

"Earlier already you made it possible for the Luftwaffe to settle urgent medical matters through experiments on human beings. Today again, I stand before a decision which, after numerous experiments on animals as well as human experiments on voluntary experimental subjects, demands a final solution. The Luftwaffe has simultaneously developed two methods for making seawater potable. The one method, developed by a Medical Officer, removes the salt from the seawater and transforms it into real drinking water; the second method, suggested by an engineer, leaves the salt content unchanged, and only removes the unpleasant taste from the sea water. The latter method in contrast to the first, required no critical raw material. From the medical point of view this method must be viewed critically, as the administration of concentrated salt solutions can produce severe symptoms of poisoning.

"As the experiments on human beings could thus far only be carried out for a period of four days, and as practical demands require a remedy for those who are in distress at sea up to 12 days, appropriate experiments are necessary.

"Required are 40 healthy test subjects, who must be available for 4 whole weeks. As it is known from previous experiments that necessary laboratories exist in the concentration Camp Dachau, this camp would be very suitable..."

Various other parties took part in correspondence upon this application, one of the writers suggesting that Jews or persons held in quarantine be used as experimental subjects. Another correspondent nominated a social gypsy half-breed as candidates for the treatment. Herr Himmler decided that gypsies, plus three others for control

purposes, should be utilized.

In fairness to the defendant it should be stated that he contests the translation of the second sentence in the first paragraph of the letter written by him to Himmler, which the prosecution interprets as meaning that experiments could no longer be conducted on voluntary subjects, and that the words "demands a final solution" meant that involuntary subjects in concentration camps should be employed. Regardless of whether or not the letter quoted by us is a correct translation of the German original, the evidence shows that within a month after the letter was sent to Himmler through Grawitz sea-water experiments were commenced at Dachau by the defendant Beiglboeck.

The method by which the experimental subjects were chosen is not known to the defendant Schroeder. As he explained from the witness stand with reference to his letter and the subsequent procedure: "I sent it away only after I had consulted the possibility of the experiment with Grawitz. And after I had informed him how the whole thing was thought by us so that he could pass on this information to Himmler in case it became necessary. Then this letter was sent off, and after possibly four weeks when Beiglboeck had arrived at Dachau-- in the meantime he was given an opportunity to carry out this work. Whatever lay in between that, how in the administrative way this was organized, we never learned... it was an inter-office affair... We only saw the initial point and the end point of this route."

Thus began another experiment conducted under the auspices of the defendant Schroeder, wherein the initiator of the experiment failed to exercise the personal duty of determining that only consenting human subjects would be used, but left that responsibility to others. Again is demonstrated the case of an officer in a position of superior command who authorized the performance of experiments by his subordinates while failing to take efforts to prescribe the conditions which will insure the conduct of the experiments within legally permissible limits.

The evidence shows conclusively that gypsies of various nationalities were used as experimental subjects. Former inmates of Auschwitz Concentration Camp were tricked into coming to Dachau with the promise that they were to be used as members of a labor battalion. When they arrived at Dachau they were assigned to the seawater experimental station without their consent. During the course of the experiment many of them suffered intense physical and mental anguish.

The Tribunal finds that the defendant Schroeder was responsible for, aided and abetted, and took a consenting part in, medical experiments performed on non-German nationals against their consent; in the course of which experiments deaths, brutalities, cruelties, tortures, and other inhumane acts were committed on the experimental subjects. To the extent that these experiments did not constitute War Crimes they constitute Crimes against Humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Oskar Schroeder guilty under Counts two and three of the Indictment.

THE PRESIDENT: The Tribunal will now be in recess until 1:30 o'clock.

(A recess was taken until 1330 o'clock.)

AFTERNOON SESSION

(The hearing reconvened at 1330 hours.)

THE MARSHAL: Persons in the court room will please find their seats.

The Tribunal is again in session.

THE PRESIDENT: In reading the judgment of the morning session, due to an error in preparing the master copy, a paragraph was omitted from page 66, being the last page of the discussion of the defendant, Handloser - I should have said it was omitted from page 71, instead of page 66. We will now read the paragraph there, following the words: "To the extent that the crimes committed by or under his authority were not war crimes, they were crimes against humanity." I shall now read the paragraph:

"The evidence conclusively shows that the German word 'fleck fieber', as translated in the indictment as 'spotted fever', is more correctly translated by 'typhus'. This is admitted, and in this judgment, in accord with the evidence, we use the word 'typhus' instead of 'spotted fever'.

We shall now proceed with the reading of the judgment in connection with the defendant, Genken?

CHARGE

The defendant Genken is charged under Counts Two and Three of the Indictment with special responsibility for, and participation in, Sulfenileide, Spotted Fever, Polio, and Incendiary bomb experiments. The Prosecution has abandoned the two latter charges and, hence, they will not be considered further. The defendant is also charged under Count Four of the Indictment with membership, after 1 September 1939, in an organization declared criminal by the Judgment of the International Military Tribunal --



namely, the SS.

Genzken was commissioned in the Medical Service of the German Navy in 1912 and served through the first World War in that capacity. From 1919 to 1934, he engaged in the private practice of medicine. He joined the NSDAP in 1936, and in October 1934 he was again commissioned as a reserve officer of the Naval Medical Department. On 1 March 1936 he was transferred to the Medical Department of the SS, with the rank of Major, and assigned to the Medical Department of a branch of the SS which in the summer of 1940 became the Waffen-SS. He served as Chief Surgeon of the SS Hospital in Berlin and was Director of the department charged with supplying medical equipment and with the supervision of medical personnel in concentration camps. He was also Medical Supervisor to Eicke, the head of all the concentration camps, which were within Genzken's jurisdiction insofar as medical matters were concerned. In May 1940 Genzken was appointed Chief of the Medical Office of the Waffen-SS with the rank of Senior Colonel, Bracht being his medical superior. He retained this position until the close of the War. In 1944 he was designated as Chief of the Medical Service of the Waffen-SS, Division D of the SS Operational Headquarters. On 30 January 1943 he was appointed Gruppenfuehrer and Generalleutnant in the Waffen-SS.

SULFANILAMIDE EXPERIMENTS:

The Sulfanilamide experiments referred to in the indictment were conducted by the defendants Geckhardt, Fischer and Overhauer at Ravensbruck Concentration Camp between 26 July, 1942 and August 1943.

During this period of time, four of the medical branches of the Waffen-SS were under Genzken, including Office XVI, Hygiene, of which the defendant Krugowsky was chief.

It is submitted by the Prosecution that the evidence proves Krugowsky to have given support and assistance to these experiments, and that, consequently, Genzken becomes criminally liable because of the position of command he held over Krugowsky. It is also urged that because Genzken attended the meeting in Berlin at which Weharddt and Fischer gave their lecture on the experiments, that this likewise shows criminal connection.

That Krugowsky rendered assistance to Geohardt in the Sulfonilamide experiments at Ravensbrueck is clearly proven. Krugowsky put his laboratory and co-workers at Geohardt's disposal. He furnished the bacterial cultures for the infections. He conferred with Geohardt about the Medical problems involved. It was on the suggestion of Krugowsky's office that wood shavings and ground glass were placed in artificially inflicted wounds made on the subjects so that battlefield wounds would be more closely simulated. It also appears that Blumenreuter, who was the Chief of Office XV under Genzken's direction, may have furthered the experiments by furnishing surgical instruments and medicines to Geohardt.

The Tribunal finds that Genzken was not present at the Berlin meeting.

Although Krugowsky and Blumenreuter may have aided Geohardt in his experiments, the Prosecution has failed to show that it was done with Genzken's

direction or knowledge.

The Prosecution, therefore, has failed to sustain the burden with regard to this particular specification.

IV. HIS EXPERIENCES:

The series of experiments which are the subject of this specification were conducted at Buchenwald Concentration Camp and began in January 1942. SS Hauptsturmfuehrer Dr. Ding, who was attached to the Hygiene Institute of the Weissen-SS, was in charge of these experiments - with the defendant HOFFER serving as his deputy.

Until 1 September 1943 both Krugowsky, the Chief of the Hygiene Institute, and Ding were subordinate to Genzken. Until the date last mentioned the chain of military command in the field of hygiene and research was as follows: Himmler - Grawitz - Genzken - Krugowsky - Ding.

Prior to 1939 Ding had been camp physician at Buchenwald, and as such was subordinate to Genzken. During the early months of the war Genzken served as an army surgeon in the field - Ding being his adjutant. During the fall of 1941, Ding returned to Buchenwald and Genzken to his office at Berlin. During their service in the field Genzken and Ding had become warm personal friends. Ding was attached to the Hygiene Institute of the Weissen-SS and was engaged in hypnosis research for the Institute. Genzken testified that Krugowsky and the Hygiene Institute were in his chain of command prior to 31 August 1943. He further testified that after the date last mentioned his office had nothing to do with Ding save to provide

money for Ding's expenses, there being no other budget from which money was available. Krugowsky testified that Genzken was his superior officer until 1 September 1943, and knew that the Hygiene Institute was working on the problem of providing an efficient vaccine against Typhus. It is admitted that Ding was carrying out medical experiments in concentration camp inmates in order to determine the effect of various Typhus vaccines.

It is not contended that such experiments were not carried out. In the course of these experiments two buildings or "blocks" were used. The experiments were conducted in Block 46, and when a satisfactory vaccine was decided upon, Block 50 was used for the preparation of vaccines.

During the course of the experiments with vaccines in March 1942 Ding himself contracted Typhus. Genzken testified that he was aware of the fact that concentration camp inmates were subjected to experiments, but stated that he was not advised as to the method of experimentation.

It is clear that the experiments necessary to decide upon a satisfactory vaccine preceded by a considerable period the production of the vaccine. Genzken testified that vaccine production began in December 1943, that the production establishment only moved into Block 50 in the middle of August, and that when production actually began "this establishment had already come under the agency of Grawitz and it was not subordinated any more" to him.

Under date of 9 January 1943 the Ding Diary contains a lengthy entry stating that by Genzken's

order the Typhus research station became the "Department of Typhus and Virus Research," that Dr. Ding would be head of this department, and that during his absence defendant Hoven would act in his place. The entry further stated that Ding was appointed Chief Department Head for special missions in Myiana, etc. The Ding Diary is discussed elsewhere in this Judgment. Considering the demonstrated desire of Ding for his personal aggrandizement, this entry is not entitled to entire credit, as written. It refers to Genzken as "Major General" - which rank he did not receive until a few weeks after 2 January 1943. The entry, however, has some probative value upon the question of Ding's status during the year 1943.

Genzken testified that he "approved" the establishment of Ding's department for vaccine research. He also testified that his department furnished necessary funds from its budget for Ding's investigations.

From the evidence it appears that prior to 1 September 1943, Mrugowsky reported regularly to Genzken, on an average of once per week, either orally or in writing.

Under date 6 May 1944 Mrugowsky signed a written report upon the subject, "Testing Typhus Vaccines." This report went to six different offices: the first copy, to Conti; the second copy, to Grawitz; and the third copy, to Genzken. The report commences: "The tests of four Typhus vaccines made by us on human subjects at the instigation of the Asian Health Leader Dr. G. S. H. had the following results..." It is stated that the

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Mortality of victims of typhus during an epidemic "was around 30 per cent" and that "during the same epidemic four groups of experimental subject were vaccinated with one each" of the four types of vaccine described in the beginning of the report. "The experimental subjects were mostly in their twenties and thirties. Care was taken when selecting them that they did not come from typhus districts and also to ensure an interval of four to six weeks between the protective vaccination and the outbreak of the clinical symptoms of the disease. According to experience this period is imperative to achieve immunity."

The effects of the four vaccines tested were described as follows. The report on the Weigl vaccine stated that "nobody died". The report on the Gildemeister and Haagen vaccine also states that no deaths occurred. The report on the Behringnormal vaccine states that one person died. The experiment with the Behring-Strong vaccine reports one death.

The last paragraph of the report states: "In the last two groups the symptoms were considerably stronger than in the first groups.... No difference between the two vaccines of the Behring Works was observed. The attending physicians stated that the general picture of the disease in group four was rather more severe compared with that of the patients of group three."

In a summation, Krupowsky recommended the use of a vaccine "produced according to the chicken egg process, which, in its immunization effect, is equal to the vaccine after Weigl."

"The effectiveness of protection depends on

"one method used in making the vaccine."

Of course, experiments with vaccines, conducted because of the urgent need for the discovery of a protective vaccine, could lead to scant results unless the subjects vaccinated were subsequently in some way effectively exposed to typhus, thereby demonstrating the effectiveness or non-effectiveness of the vaccination. While Krugowsky's report, as we referred to, makes no reference to an artificial infection, it does state without further explanation that two deaths occurred, and in the last paragraph, quoted above, compares the severity of "the disease" between groups 3 and 4.

On cross-examination Krugowsky testified that Dr. Ding was to lecture at a meeting of Consulting Surgeons in the spring of 1943 and that the witness informed Genken concerning "the intended amount of vaccines to be produced by the SS." Krugowsky testified that he gave Genken this information for three reasons: first, that Genken had to be advised of the fact that Ding, as a member of the Waffen-SS, was to give a lecture to the surgeons; second, that Genken should be informed concerning "the effectiveness of a number of vaccines to be used for troops;" third, that Genken should know when he could expect the first production of vaccines for the SS and the amounts he could count on for each month, Krugowsky further testified:

"The conference with Dr. Genken was extremely brief. As far as I remember we were standing close to his desk. I told him that the various vaccines which I mentioned to him had a different

"effect; I told him that the effect varied as to the length of the temperature and a reduction of fatalities; and I told him that after having vaccinated the entire SS we could count on some protective effect for all soldiers. On that occasion I showed him a few charts which Ding had handed over to me at that time, the same charts which Ding reintroduced in his paper, and I used these charts in order to explain the effectiveness of the vaccines to him.

Q. "The mortality figures and the temperature figures could be derived from these charts, couldn't they?"

A. "Yes. If I remember correctly, on the reading of these charts the information was given what day of the infection was. This entire conference was very brief and it is quite possible that Dr. Genken - who was only concerned with the most important points which he had to know - it is quite possible that he overlooked that. I had no cause to point it out to him in particular since I was not reporting to him about Ding's series of experiments but was only reporting to him about the protective value of various vaccines which he, as medical chief, had to know. These were two completely different points of view."

The Tribunal is convinced that prior to 1 September, 1942, Genken knew the nature and scope of the activities of his subordinate, Krugovsky and Ding, in the field of typhus research; yet he did nothing to insure that such research would be conducted within permissible legal limits. He knew that concentration camp inmates were being subjected

to cruel medical experiments in the course of which deaths were occurring; yet he took no steps to ascertain the status of the subjects or the circumstances under which they were being sent to the experimental block. Had he made the slightest inquiry he would have discovered that many of the human subjects used were non-German nationals who had not given their consent to the experiments.

As the Tribunal has already pointed out in this Judgment, "the duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs, or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity."

We find that Genzken, in his official capacity, was responsible for, aided and abetted the Tychus experiments, performed on non-German nationals against their consent, in the course of which deaths occurred as a result of the treatment received. To the extent that these experiments did not constitute War Crimes they constituted Crimes against Humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION:

Under Count Four of the Indictment Genzken is charged with being a member of an organization declared criminal by the Judgment of the International Military Tribunal, namely, the SS. The evidence shows that Genzken became a member of the SS on 1 March 1936 and voluntarily remained in that organization until the end of the war. As a high-ranking member of the Medical Service of the Waffen-SS he was criminally implicated in the commission of War Crimes and Crimes

against humanity, as charged under Counts Two and Three of the Indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Karl Gonsken guilty under Counts Two, Three, and Four of the Indictment.

THE PRESIDENT: Judge Sebring will continue reading the judgment.

THE CASE GEBHARDT

The defendant Gebhardt is charged under Counts Two and Three of the Indictment with special responsibility for, and participation in, High Altitude, Freezing, Hysteria, Lost Gas, Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Sex Inter, Epidemic Jaundice, Sterilization, Spotted Fever, Poison, and Incubation Bone experiments.

The defendant Gebhardt held positions of great power and responsibility in the medical service of the SS in Nazi Germany. He joined the NSDAP in 1933 and the SS at least as early as 1935. He took part in the Nazi Putsch of 1933, which aimed at the overthrow of the so-called Weimer Republic, the democratic government of Germany, being then a member of the illegal Free Corps, "Bund Oberland." When, in 1933, the hospital at Sonnenlychen was founded Gebhardt was appointed Chief Physician of this institution. In 1936 he became the attending physician to Himmler. He was also personal physician to Himmler and his family. In 1940 Gebhardt was appointed Consulting Surgeon of the Waffen-SS and, in 1943, Chief Clinical Officer (Lehrstater Kliniker) of the

Reichsarzt-SS and Police Grawitz. In the Allgemeine-SS Gebhardt attained the rank of a Gruppenführer (Major General), and in the Waffen-SS the rank of Major General in the Reserve.

SULFAMIDAZOLE EXPERIMENTS:

The purpose for which these experiments were undertaken is defined in Counts Two and Three and the Indictment.

In the Ravensbruck Concentration Camp during a period from 20 July 1942 until August 1943 the defendant Gebhardt, aided by defendants Flechner and Obermayer, performed such experiments upon human subjects without their consent. Gebhardt personally requested Heinrich Himmler's permission to carry out these experiments, and he attempted to assume full responsibility for them and for any consequences resulting therefrom. He himself personally carried out the initial operations.

While it is not deemed strictly necessary in this Judgment to describe in any detail the procedure followed in performing these experiments, a brief statement will now be made thereon. The experimental subjects consisted of 15 male concentration camp inmates used during preliminary experiments in July 1942, but later 60 Polish women, who were experimented on in 3 groups of 12 subjects each.

In the first series of experiments the healthy subjects were infected with various bacteria, but resulting infections were not thereafter considered sufficiently serious to furnish an answer to the problem sought to be solved and further experiments were then undertaken.

Dr. Gächardt has admitted that in the 2nd series of experiments 3 of the experimental subjects died as a result of the treatment they received. All of these subjects were persons who had been selected by the concentration camp authorities and who were not consulted as to their consent or willingness to participate. Notwithstanding this, however, the experimental subjects protested against experiments orally and in writing, stating that they would have preferred death to continued experiments since they were convinced that they would die in any event.

An examination of the evidence presented to this Tribunal in connection with Sulfanilamide experiments performed upon unwilling and non-consenting concentration camp inmates indicates conclusively, that participating human subjects were used under duress and coercion in experiments performed upon their bodies; that persons acting as subjects incurred and suffered physical torture and the risk of death; that in the experiments here discussed at least five deaths of subjects were caused therefrom.

It is claimed by Dr. Gächardt that all of the non-German experimental subjects were selected from inmates of concentration camps, former members of the Polish resistance movement, who had previously been condemned to death and were in any event marked for legal execution. This is not recognized as a valid defense to the charge of the indictment.

The Polish women who were used in the experiments had not given their consent to become experimental subjects. That fact was known to Gächardt. The evidence conclusively shows that they had been confined at

Revensbruck without so much as a semblance of trial. That fact could have been known to Gieharat and he made the slightest inquiry of them concerning their status. Moreover, assuming for the moment that they had been condemned to death for acts considered hostile to the German forces in the occupied territory of Poland, these persons still were entitled to the protection of the laws of civilized nations. While under certain specific conditions the rules of land warfare may recognize the validity of an execution of spies, war rebels, or other resistance workers, it does not under any circumstances countenance the infliction of death or other punishment by hanging or torture.

BONE, MUSCLE AND NERVE REGENTATION AND BONE TRANSPLANTATION EXPERIMENTS;

These experiments were carried out in Ravensbruck Concentration Camp during the same time, and on the same group of Polish women used in the scientific experiments. Upon these Polish women three kinds of bone operations were performed -- artificially induced fractures, bone transplantsations, bone splints -- the conditions of the operations being specially created in each particular case. Some girls were required to submit to operations several times. In one instance small pieces of fibulae were taken out; in another instance the cartilage of the hip was removed. Cases occurred where operations were experimented on by deliberately fracturing their limbs in several places and testing the effect of certain treatments. In at least one case bone incisions were performed in a subject six different times. In another case the shoulder blade of a subject was removed.

Further recital of these activities is as unnecessary as were the operations themselves. The testimony heard and exhibits filed and examined by the Tribunal conclusively sustain the allegations of the Indictment with reference to the experiments mentioned therein.

STAGE (EXHIBIT) EXPERIMENTS:

A witness whose testimony must be accepted as credible testified concerning these experiments in which concentration camp inmates were used without their consent and were thereafter infected with gas. He testified to at least two series of experiments which resulted fatally for 15 of the subjects.

The Prosecution claims, and it is likely that these biochemical experiments which were performed in the Dachau Concentration Camp were complementary to and formed parts of the gas-chamber experiments in Ravensbrueck, sponsored by the defendant Goebbels. The evidence, however, is not sufficient to establish the original connection of Goebbels and these experiments.

STAGE (EXHIBIT) EXPERIMENTS:

Dr. Goebbels' position, which has been mentioned in this judgment as being an official and personal representative of Heinrich Himmler - chief of the SS and Police - concerning concentration camp medical experiments, was definitely defined by an order issued by Himmler in May 1940 directing that no action from Goebbels would be required before any experiments could be carried out on such human subjects. This order stated that all medical experiments to be carried out at the concentration camps had to have Himmler's personal approval. It goes on, however, to state that the applications for permission to carry out experiments involving human subjects was required to be obtained from Himmler - yet before such application could be examined a critical opinion of the chief clinical officer of the SS, Dr. Goebbels, concerning its technical aspects was required to accompany it. Complying with this order Goebbels, in reference to the water experiments, wrote:

"I am absolutely right to support the latter in every way up to the personal physician of the Fuehrer-SS at his disposal to supervise the experiments." (Exo. 31)

This fact is deemed to be sufficient to show that Dr. Gebhardt knew, and approved, the performance of the See Vater experiments as set forth in the Indictment.

SPECIALTY EXPERIMENTS:

Details of the sterilization experiments will be dealt with elsewhere in this report; and it is unnecessary to repeat them here, except to the extent necessary to inquire the part, if any, taken by Gebhardt therein.

On 7 July 1942 a conference took place between Hitler, Gebhardt SS-Major Walter Glascke, and SS-BrigadeFuehrer Glueckert, to discuss the sterilization of Jews. Dr. Glueckert was promised that the Auschwitz Concentration Camp would be placed at his disposal for experiments on human beings and animals, and he was requested to discover by means of fundamental experiments a method of sterilizing persons without their knowledge. During the course of the conference Hitler called the special attention of all present to the fact that the matter involved was most secret and should be discussed only with the officials in charge and that the persons present at the experiments or discussions were to pledge secrecy.

From this evidence it is apparent that Gebhardt was present at the initial meeting which launched at least one phase of the sterilization program at the concentration camps and thus had knowledge and gave at least passive approval to the program.

HIGH FEVER, TYPHOUS, MALARIA, LOSS OF SENSE, EPIDEMIC JAUNDICE, SPOTTED FEVER, POLIO, AND INCUBATION PERIOD EXPERIMENTS:

Details as to the origin of and procedure followed in these experiments are discussed elsewhere in this report, and will not be repeated. Our only concern is to determine to what extent, if any, the defendant Gebhardt took part in the experiments.

In these experiments the defendant seems not to have taken any active

part, as to the in the sulfonilamide experiments and in other programs. It was also noted that his close connection with Heinrich Himmler creates a presumption that these experiments were conducted with Gebhardt's knowledge and approval. Be that as it may, no sufficient evidence to that effect has been presented, and a mere presumption is not enough in this case to convict the defendant.

Attention has been given to the brief filed by counsel for the defendant Gebhardt. For the most part it is unnecessary to discuss the theories advanced in this brief, for the reason that the main reliance of the defense seems to be that in his connection with the experiments charged in the indictment, Dr. Gebhardt acted as a soldier in the execution of orders from an authorized superior. We can not see the applicability of the doctrine of superior orders as a defense to the charges contained in the indictment. Such doctrine has never been held applicable in a case where the one to whom the order is given has free latitude of decision whether to accept the order or reject it. Such was the situation with reference to Gebhardt. The record makes it manifestly plain that he was not ordered to perform the experiments, but that he sought the opportunity to do so. Particularly is this true with reference to the sulfonilamide experiments. Gebhardt, in effect, took the step from Gross to demonstrate that certain surgical procedures advocated by him at the bedside of the mortally wounded Heinrich at Poznan in May of 1942 were scientifically and surgically superior to the methods of treatment proposed by Dr. Morall, Hitler's personal physician. The doctrine, therefore, is not applicable. But even if it were, the fact of such orders could barely be considered, under Control Council Law No. 10, as nullifying punishment.

Another argument presented in briefs of counsel attempts to ground itself upon the debatable proposition that in the broad interest of alleviating human suffering, a State may lawfully provide for medical experiments to be carried out on prisoners condemned to death without

Under no circumstances, even though such experiments may involve great suffering on the part of the experimental subject. Whatever may be the object of the State with reference to its own citizens, it is certain that such isolation may not be extended so as to permit the practice upon nationals of other countries who, held in the most abject servitude, are subjected to experiments without their consent and under the most brutal and senseless conditions.

"On this, that Gebhardt, in his official capacity, was responsible for, aided and abetted, and took a consistent part in medical experiments performed on non-German nationals against their consent; in the course of which deaths, maiming, and other inhumane treatment resulted to the experimental subjects. To the extent that these experiments did not constitute War Crimes they constituted Crimes against Humanity.

WITNESS TO ORIGINAL ORGANIZATION:

Under Count Four of the Indictment Zekhardt is charged with being a member of an organization declared criminal by the Judgment of the International Military Tribunal, namely the SS. The evidence shows that Zekhardt became a member of the SS at least as early as 1933 and voluntarily remained in that organization until the end of the war. As one of the most influential members of the medical service of the Wehrmacht-SS he was criminally implicated in the commission of War Crimes and Crimes against Humanity as charged under Counts Two and Three of the Indictment.

CONCLUSIONS

Military Tribunal I finds and adjudge the Defendant Karl Gebhardt guilty under Counts Two, Three and Four of the Indictment.

THE CASE ELGIN

Defendant Stone is charged under Counts Two and Three of the

Indictment with personal responsibility for, and participation in
Zyklon, Lost Gas, and Sulfanilamide experiments; the extermination of
Jews and Poles; and the execution of the euthanasia program. Proof
has also been adduced for the purpose of showing that he participated
in the freezing, bacteriological warfare, and blood coagulation
experiments.

The charge with reference to sulfanilamide experiments has been
withdrawn by the Prosecution and hence will not be considered further.

The defendant Blome studied medicine at Göttingen and received his
M.D. degree in 1920. From 1924 to 1934 he engaged in private
practice. In the later years he was summoned to Berlin where, in
1931, he reorganized the German medical educational system. He also
served as a consultant in the Central office of the German Red Cross and as
Business Manager of the German Physicians' Association, which position
he held until the end of World War II. In 1935 he became President
of the German Academy for International Medical Education. From
1935 on Blome acted as deputy for Dr. Leonardo Conti who was leader
of the German Physicians' Association, Head of the Main Office for
Public Health of the Party, and Leader of the National Socialist
Physicians' Association. In 1941 he became a member of the Reich
Health Council, and in 1943 was appointed Plenipotentiary for
Cancer Research, connected with the Research Commission for Protection
against Biological Warfare.

Blome joined the SA in 1931 and became the Chief Medical Officer of
the SA in the province of Mecklenburg. In 1938 he was appointed a
branch office leader, and in the SA he attained a rank equivalent
to the one of Major General. In 1943 he was awarded the 1st class
medal of the Nazi Party.

As Plenipotentiary for Cancer Research, it was his duty to determine
which research problems should be studied and to assist such problems
to scientists best fitted to investigate them.

FREESING EXPERIMENTS:

The Prosecution argues that Blome is criminally responsible for participation in the freezing experiments as charged in the indictment. In the sub-paragraph, which particularly refers to freezing, Blome is not named among the defendants charged with special responsibility for the experiments. Moreover, the record does not contain evidence which shows beyond a reasonable doubt that Blome bore any responsible part in the conduct of the freezing experiments.

MALARIA EXPERIMENTS:

The evidence is insufficient to disclose any criminal responsibility of the defendant in connection with the malaria experiments.

LOST RABBIT EXPERIMENTS:

The evidence is insufficient to disclose any criminal responsibility of the defendant in connection with these experiments.

INTENTIONAL OF TUBERCULAR POLES: The basis for the Prosecution's case against the defendant in this regard is to be found in a series of letters with reference to the tuberculosis menace in the Reichsgau Wartheland, which had been overrun by the German Reich and settled by its citizens.

During the year 1941 the German Government began a program of extermination of the Jewish population of the Eastern occupied territories. On 1 May 1942 Greiser, the German Military Governor of Reichsgau Wartheland, wrote Himmler advising him that as to the 100,000 Jews in the district, the "special treatment approved by Himmler was about completed." The letter then continued:

".... I ask you for permission to rescue the district immediately after the measures taken against the Jews from a menace which is increasing week by week, and use the existing and efficient special commission for that purpose.

There are about 230,000 people of Polish nationality in my district who were exposed to suffer from tuberculosis. The number,...

infected with open tuberculosis is estimated at about 35,000. This fact has led in an increasingly frightening measure to the infection of Germans who came to the Wartheland perfectly healthy..... a considerable number of well known leading men, especially of the police, have been infected lately and are not available for the war effort.... The ever increasing risks were also recognized and highlighted by the deputy of the Reich Leader for Public Health, Doctor Professor Dr. Blome.....

Even in Germany proper it is not possible to take appropriate hygienic steps against this public plague, I think I could take responsibility.... to have cases of open tuberculosis exterminated from the Polish race here in the Wartheland. Of course, only a Pole should be handed over for such an action, who is not only suffering from open tuberculosis, but whose incurability is proved and certified by a public health officer.

Considering the urgency of this project I ask for your approval in principle as soon as possible. This would enable us to make the preparations with all necessary precautions now to set the action against the Poles suffering from open tuberculosis under way, while the action against the Jews is in its closing stages."

"Heil Hitler!"

"Greiser"

Reinhold Koppe, the police leader on Greiser's staff, wrote to Adolf Brandt restating Greiser's proposal and urging Brandt to call the matter to Hitler's attention. Brandt promptly acknowledged the letter, advising Koppe that the proposal had been referred to the Chief of the Security Police for opinion, but that the final decision would rest with Hitler.

On 9 June 1942 the Chief of the Security Police rendered his opinion to Hitler: "I have no scruples against having the Protectorate members and stateless persons of the Polish race... who are

afflicted with open tuberculosis submitted to the special treatment in the name of the proposal of General Greiser... The individual measures, though, will first have to be discussed thoroughly with the Security Police, in order to carry out the execution with the least possible attraction of attention.* The opinions thus rendered undoubtedly received the full approval of Hitler for on 27 June 1942 Rudolf Brandt passed on to Greiser a letter from Hitler containing the following decision:

"Dear Comrade Greiser:

"I have no objection to having protectorate people and stateless persons of Polish origin who live within the territory of the Warthegau and are infected with tuberculosis handed over for special treatment as you suggest; as long as their disease is incurable..... I would like to request, however, to discuss the individual measures in detail with the Security Police first, in order to assure inconspicuous accomplishment of the task...."

Signed

H. Himmler"

The Himmler letter was acknowledged by Greiser on 21 November 1942, Greiser advising Himmler that in pursuance of the permission given him to apply "special treatment" to tubercular Poles he had made arrangements for an X-Ray examination of all people in the territory, but that now that "special treatment" had been approved, Slope, Deputy Chief of the Public Health Office of the NSDAP was raising objections to its execution. A copy of Slope's letter to Greiser was enclosed for Himmler's information.

Slope's letter to Greiser is dated 18 November 1942. It opens by recalling various conversations between the writer and Greiser concerning the campaign against tuberculosis in the Warthegau, and then proceeds to consider the matter in detail; the letter proceeding:

"With the settlement of Germans in all parts of the Gau an enormous danger has arisen for them...What goes for the Warthegau also holds true for the other annexed territories.....

Therefore, something basic must be done soon. One must decide the most efficient way in which this can be done. There are three ways to be taken into consideration:

- "1. Special treatment of the seriously ill persons.
- "2. Most rigorous isolation of the seriously ill persons.
- "3. Creation of a reservation for all TB patients.

"For the planning, attention must be paid to different points of view of a practical, political and psychological nature. Considering it most soberly, the simplest way would be the following: Aided by the X-Ray battalion, we could reach the entire population, German and Polish, of the Gers during the first half of 1943. As to the Germans, the treatment and isolation is to be prepared and carried out according to the regulations of Tuberculosis Relief. The approximately 35,000 Poles who are incurable and infectious will be "specially treated". All other Polish consumptives will be subjected to an appropriate cure in order to save them for work and to avoid their causing contagion."

Blome then proceeds, stating that he had made arrangements for communication of the "radical procedure", but suggests that some assurance should be procured that Hitler would agree to the project.

The letter then goes on to say:

"I could imagine that the Fuehrer, having some time ago stopped the progress in the insane asylums, might at this present consider a "special treatment" of the incurably sick as inevitable and irresponsible from a political point of view. As regards the Euthanasia program it was a question of people of German nationality afflicted with hereditary diseases. Now it is a question of infected sick people of a subjugated nation."

Blome then voices the opinion that if the program is put into execution it cannot be kept secret and will be made the basis for much adverse and harmful propaganda both at home and abroad. He suggests accordingly that before the program is commenced all points of view should again be presented to Hitler.

Continuing, Blome writes that if Hitler should forbid the radical proposal suggested by Greiser, three other solutions were open: (1) consumptives and incurables could be isolated with their relatives; (2) all infectious consumptives might be strictly isolated in nursing establishments; (3) the consumptives might be resettled in a particular

area. If the latter plan were adopted the sick could reach the assigned territory on foot, and thus save the costs of transportation.

Blome's letter finally concludes:

"After a proper examination of all these considerations and circumstances the creation of a reservation, such as the reservations for lepers, seems to be the most practicable solution. Such a reservation should be able to be created in the shortest time by means of the necessary settlement. Within the reservation one could easily set up conditions for the strict isolation of the strongly contagious.

"Even the case of the German consumptives represents an extremely difficult problem for the Gau. But this cannot be overcome, unless the problem of the Polish consumptives is solved at the same time."

The evidence shows that the letter from Greiser to Himmler, with Blome's suggestions enclosed, was acknowledged by Himmler on 3 December 1942 with the following final decision:

"Dear Party Comrade Greiser:

"I have received your letter of 21 November 1942. I, too, believe that it would be better to take into consideration the misgivings set forth by Party member Dr. Blome. In my opinion it is impossible to proceed with the sick persons in the manner intended, especially since, as you have informed me, it will be possible to exploit the practical results of the tests only in six months.

"I suggest you look for a suitable area to which the incurable consumptives can be sent. Beside the incurables, other patients with less severe cases of tuberculosis could quite well be put into this territory too. This action would also, of course, have to be exploited with the appropriate form of propaganda.

"Before writing you this letter I again thoroughly thought over whether the original idea could not in some way be carried out. However, I am convinced now that it is better to proceed the other way."

The Prosecution maintains that this series of letters which we have referred to established the criminal participation of the defendant Blome in the extermination of tubercular Poles. We cannot follow the argument. It is probable that the proposal to isolate tubercular Poles, as suggested by Blome and approved by Himmler, was at least partially carried out; although the record discloses but little with reference to what actually transpired. It may be that in the course of such a program Poles may have died as the result of being uprooted from their homes and sent to isolation stations; but the record contains no direct credible evidence upon the subject.

Blome complained from the witness stand his letter to Greiser by saying that it was written in order to prevent the extermination program of tubercular Poles from being put into execution. Certainly, his letter indicated on its face that he opposed the "special treatment" suggested by Greiser.

We cannot say, therefore, that the explanation offered is wholly without substance. It at least raises a reasonable doubt in our minds concerning the matter. Blome knew Hitler and Himmler. He well knew that any objections to "special treatment" based on moral or humanitarian grounds would make but small impact upon the minds of men like these Nazi leaders. He knew, moreover, that before Greiser's proposal for extermination would be abandoned a plan which appeared to be better must be suggested. If viewed from the standpoint of factual and psychological considerations, it cannot be held that the letter was not well worded when considered as an attempt to put an end to the plan originally adopted, and to bring the substitution of another plan not so drastic. Whatever may have been its purpose, the record shows that in this particular the letter did in fact divert Himmler from his original program and that as a result thereof the extermination plan was abandoned.

EUTHANASIA PROGRAM: Blome is charged with criminal responsibility in connection with the euthanasia program, but we are of opinion that the

evidence is insufficient to sustain the charge.

BACTERIOLOGICAL WARFARE: The Prosecution contends that the evidence in the case established Bloem's guilt in connection with research concerning different forms of bacteriological warfare. Bloem who was Plenipotentiary for Cancer Research in the Polish Research Council, admits that the problem of cancer research was allied with the Research Commission for Protection against biological warfare. He admits further, that he was placed in charge of an institute near Poznan in which the problems of biological warfare were to be investigated, but states that the work being done at the Poznan institute was interrupted in March 1945 by the advance of the Russian Army.

This latter fact seems to be confirmed by the evidence. In this connection Schreiber appeared as a witness before the International Military Tribunal. His testimony given there has been received in evidence before this Tribunal. From the testimony it appears that Bloem visited Schreiber at the Military Medical Academy, Berlin during March 1945 and stated to him that he, Bloem, had abandoned his institute in Poznan due to the advance of the Russians, but before leaving had attempted to destroy his installations as he feared that the Russians might discover that preparations had been made in the institute for experiments on human beings.

Counsel for the Prosecution has brought to our judicial notice a finding by the International Military Tribunal in its judgment wherein it is found that:

"In July 1943 experimental work was begun in preparation for a campaign of bacteriological warfare; Soviet prisoners of war were used in the medical experiments, which more often than not proved fatal."

See "Trial of the Major War Criminals". Vol., I, p. 231.

It is submitted by the Prosecution that this finding of the International Military Tribunal, when considered in connection with other

evidence in the case, requires this Tribunal to find the defendant Spong guilty under the indictment.

The suggestion is not tenable. It may well be that defendant Spong was preparing to experiment upon human beings in connection with bacteriological warfare, but the record fails to disclose that fact, or that he ever actually conducted experiments. The charge of the Prosecution on this issue is not sustained.

FORENSIC EVIDENCE: The Prosecution has introduced evidence which suggests that Spong may be criminally responsible for biological experiments conducted by Rascher at Dachau, in which German prisoners of war were used as experimental subjects. In our view the evidence does no more than raise a strong suspicion; it does not sustain the charge beyond a reasonable doubt.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Kurt Spong not guilty as charged under the indictment and directs that he be released from custody under the indictment when this Tribunal presently adjourns.

THE PRESIDENCY:

Judge Crawford will continue reading the Judgment.

C O R R E C T I O N S H E E T

COURT I

CASE I

Afternoon Session

19 August 1947

Please insert page 11449-A between
pages 11449 and 11450.

C O R R E C T I O N S H E E T

COURT I

CASE I

Afternoon Session

19 August 1947

Please insert page 11449-A between
pages 11449 and 11450.

Under Counts Two and Three of the Indictment the defendant Rudolf Brandt is charged with special responsibility for, and participation in, High/Altitude, Freezing, Malaria, Lost Gas, Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, Seawater, Epidemic Jaundice, Sterilization, and Typhus Experiments. He is also charged under these counts with criminal responsibility for the murder of 112 Jews for the purpose of completing a skeleton collection for the Reich University of Strassbourg; for the murder and ill-treatment of tubercular Poles; and for the euthanasia program carried out by the German Reich.

Under Count Four of the Indictment he is charged with membership in an organization declared criminal by the Judgment of the International Military Tribunal.

The prosecution has abandoned the charge of participation in the Bone, Muscle and Nerve Regeneration and Bone Transplantation Experiment; hence, it will not be considered further.

The defendant Rudolf Brandt joined the Nazi Party in 1932. He was commissioned a Second Lieutenant in the SS in 1935. In approximately ten years he rose

to the rank of SS Colonel. He is one of the three defendants in the case who is not a physician.

From the commencement of his career in the Nazi organization until his capture by the Allied Forces in 1945 he was directly subordinate to and closely associated with the leader of the SS, Heinrich Himmler, and he had full knowledge of his chief's personal and official interests and activities.

To Himmler, Rudolf Brandt was first of all an important and trusted clerical assistant. The record shows him to have been an unusually proficient stenographer. That is the road by which he finally arrived at a position of considerable power and authority as Personal Referent on Himmler's personal staff, Ministerial Councillor in the Ministry of the Interior, and a member of the Ahnenerbe. Acting for Himmler during his absences, Rudolf Brandt, in these positions, had a tremendous opportunity to and did exercise personal judgment and discretion in many serious and important matters.

HIGH ALTITUDE EXPERIMENTS

These experiments extended from March to August 1942. Their details are dealt with elsewhere in this judgment. A portion of the evidence in this specification consists of correspondence between the defendant Rudolf Brandt and various others in the German military service who were personally engaged in, or were closely connected with, the physical details of the experiments performed. The correspondence just previously mentioned was admitted in evidence, is well authenticated, and even standing alone, without additional oral testimony - of which there was also plenty - is deemed amply sufficient to disclose beyond reasonable doubt that except for the sanction and diligent cooperation of the defendant Rudolf Brandt, or someone occupying his position, the high altitude experiments mentioned in the indictment could not have been conducted.

Taken altogether, the evidence on this item discloses that during the period between March and August 1942 certain medical experiments

were conducted at the Dachau Concentration Camp in Germany, for the benefit of the German Air Force, to determine the limits of human endurance and existence at extremely high altitudes. Various human beings, unwillingly, and entirely without their consent, were required and compelled to, and did participate in the aforesaid experiments as subjects thereof. The said non-consenting subjects were prisoners of war, German civilians and civilians from German occupied territory, whose exact citizenship, in many cases, could not be ascertained. Among the experimental subjects there were numerous deaths, estimated by witnesses at 70 or 80, resulting directly from compulsory participation in the experiments. Exact data on the total fatalities cannot be stated, but there is convincing evidence that during the last day's operation of the high altitude experiments five participating and non-consenting subjects died as the result thereof. The greater number of the experimental subjects suffered grave injury, torture and ill treatment.

FREEZING EXPERIMENTS

In this experiment, or series of experiments, Rudolf Brandt is established as an intermediary and necessary aid between Heinrich Himmler, who authorized the work to be done, and those who were appointed by him actually to perform the ruthless task. Evidence is conclusive that Rudolf Brandt at all times knew exactly what experimental processes would be carried out. He knew the procedure followed was to select from the inmates at Dachau such human subjects as were considered most suitable for experimental purposes. He knew that no consent was ever deemed necessary from the persons upon whom the experiments were to be performed. He knew that among the experimental subjects were non-German nationals, including civilians and prisoners of war.

The exact number of deaths cannot be ascertained from the evidence, but that fatalities occurred among the experimental subjects has been proven beyond a reasonable doubt.

LOST (MUSTARD) GAS EXPERIMENTS

On this specification, an affidavit of the defendant Rudolf Brandt which is confirmed by other evidence reads substantially as follows:

"Towards the end of the year 1939 experiments were conducted at the Sachsenhausen Concentration Camp on persons who were certainly not all volunteers, in order to ascertain the efficacy of the different treatment of wounds inflicted by Lost gas. Lost is a poisonous gas which produces injurious effects on the epidermis. I think it is generally known as mustard gas. Therefore, experiments were conducted on inmates of concentration camps. As far as I understand, the experiments consisted of inflicting wounds upon various parts of the bodies of the experimental subjects and infecting them thereafter with Lost. Various methods of treatment were applied in order to determine the most effective one...

"In the second half of 1942 Hirt (Dr. August Hirt) together with... who served in the Luftwaffe, initiated experiments on inmates of the Natzweiler Concentration Camp. The inmates for these as well as other experiments were simply chosen by Pohl's office, the Economic and Administrative Main Office (WVHA). In order to be employed for such purposes, the experiments on human subjects with Lost gas had been carried on during the years 1943 and 1944 in the Sachsenhausen Concentration Camp as well as in the Natzweiler Concentration Camp. The result was that some of the inmates died."

In the course of the gas experiments above referred to, testimony in the record discloses that a considerable amount of correspondence was carried on by persons concerned (except the experimental subjects themselves), and it appears that some, at least, of this was referred to Rudolf Brandt for action, upon which he personally intervened sufficiently to associate himself actively with the conduct of the work being done. And so he must be regarded as criminally responsible.

STERILIZATION EXPERIMENTS

Rudolf Brandt is charged, as in the indictment set forth, with special responsibility under the above heading. The means by which sterilization experiments or processes were to be made or utilized included X-ray treatment, surgery, and drugs.

No specific instances of any drug being actually used have been clearly shown by oral testimony or exhibits herein submitted in evidence. In reference to the x-ray and surgery methods of sterilization, however, Rudolf Brandt is shown by the evidence to have taken a moving part in the preparation of plans, and in their execution, sufficient to justify the Tribunal in finding his criminal connection therewith. An affidavit executed by the defendant Rudolf Brandt reads as follows:

"Himmler was extremely interested in the development of a cheap, rapid sterilization method which could be used against enemies of Germany, such as the Russians, Poles, and Jews. One hoped thereby not only to defeat the enemy, but to exterminate him. The capacity for work of the sterilized persons could be exploited by Germany, while the danger of propagation would be eliminated. This mass sterilization was part of Himmler's racial theory; particular time and care were devoted to these sterilization experiments."

We learn from the record that persons subjected to treatment were "young, well-built inmates of concentration camps who were in the best of health, and these were Poles, Russians, French, and prisoners of war."

It goes without saying that the work done in conformity with the plans of Himmler, substantially aided by the cooperation of Rudolf Brandt, brought pain and suffering to great numbers of people.

TYPHUS EXPERIMENTS

Medical experiments ostensibly conducted to benefit Germany in the prevention of typhus fever were carried on in the Natzweiler Concentration Camp beginning with the year 1942. The details of these experiments have been dealt with elsewhere in this judgment.

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In the evidence it is proven that not less than 50 experimental subjects died as a direct result of their participation in these typhus experiments. Persons of all nationalities were used as subjects. Regarding these enterprises, Rudolf Brandt, in his own affidavit, admits that these experimental subjects did not volunteer but were conscripted and compelled to serve without their consent being sought or given.

Inasmuch as information on the typhus experiments, both before and after their performance, was furnished, as a matter of course, to Himmler through Brandt, the defendant's full knowledge of them is regarded as definitely proven.

Here, again, the managing hand of the defendant is shown. The smooth operation of these experiments is demonstrated to have been contingent upon the diligence with which Rudolf Brandt arranged for the supply of quotas of suitable human experimental material to the physicians at the scene of the experiment.

In view of these proven facts, the defendant Rudolf Brandt must be held and considered as one of the defendants responsible for performance of illegal medical experiments where deaths resulted to the non-consenting human subjects.

SKELTON COLLECTION

In response to a request by Rudolf Brandt, on 9 February 1942 the defendant Sievers, business manager of the Ahnenerbe, submitted to him certain data on the alleged desirability of securing a Jewish skeleton collection for the Reich University of Strasbourg. The report furnished to the defendant Brandt contained among other things the following:

"By procuring the skulls of the Jewish Bolshevik Commissars, who personified a repulsive yet characteristic humanity, we have the opportunity of obtaining tangible scientific evidence. The actual obtaining and collecting of these skulls without difficulty could be best accomplished by a directive issued to the Wehrmacht in the future to immediately turn over alive all Jewish Bolshevik Commissars to the field police."

On February 27, 1942, Rudolf Brandt informed defendant Sievers that

Himmler would support the enterprise and would place everything necessary at his disposal; and that Sievers should report again in connection with the undertaking.

Testimony and exhibits placed before this Court are abundantly sufficient to show that the plan mentioned was actually put into operation; that not less than 86 people were murdered for the sole purpose of obtaining their skeletons. Much more could be said in reference to this revolting topic but it would add nothing to the Judgment. The fact that Rudolf Brandt showed an initial interest and collaborated in the undertaking is enough to require a finding that he is guilty of murder in connection with the program.

MALARIA, SEAWATER, AND EPIDEMIC JAUNDICE EXPERIMENTS,
AND THE CHARGE OF THE MURDER AND MISTREATMENT OF POLES

It appears to be well established that Himmler sponsored, supported, furthered, or initiated each of these enterprises. Doubtless Brandt knew what was going on, and perhaps he helped in the program. The evidence is not sufficient, however, to justify such a finding.

The Tribunal finds that the defendant Rudolf Brandt was an accessory to, ordered, abetted, took a consenting part in, was knowingly connected with plans and enterprises involving, and was a member of an organization or group connected with, the commission of medical experiments on non-German nationals, without their consent, in the course of which experiments murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts were committed; and the murder of no less than 86 non-German Jews for a skeleton collection. To the extent that these crimes were not War Crimes they were Crimes against Humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION

Under Count Four of the indictment Rudolf Brandt is charged with being a member of an organization declared criminal by the judgment of the International Military Tribunal, namely, the SS. The evidence shows that Rudolf Brandt became a member of the SS in 1933, and remained in this organization until the end of the war. As a member of the SS he

was criminally implicated in the commission of War Crimes and Crimes against Humanity, as charged under Counts Two and Three of the indictment.

An extremely persuasive and interesting brief on behalf of the defendant Rudolf Brandt, filed by his attorney, has received careful attention by this Tribunal. Therein it is urged that Rudolf Brandt's position under Heinrich Himmler was one of such subordination, his personal character so essentially mild, and he was so dominated by his chief, that the full significance of the crimes in which he became engulfed came to him with a shock only when he went to trial. This plea is offered in mitigation of appalling offenses in which the defendant Brandt is said to have played only an unassuming role.

If it be thought for even a moment that the part played by Rudolf Brandt was relatively unimportant when compared with the enormity of the charges proved by the evidence, let it be said that every Himmler must have his Brandt, else the plans of a master criminal would never be put into execution.

The Tribunal, therefore, cannot accept the thesis.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Rudolf Brandt is guilty under Counts Two, Three, and Four of the indictment.

THE PRESIDENT: The Tribunal will now be in recess for a few moments.

(A recess was taken.)

THE ACCUSATION: The charge against defendant MRUGOWSKY.

The defendant is charged under Counts Two and Three of the indictment with special responsibility for, and participation in, freezing, malarial, sulfonamide, typhus, poison, epidemic jaundice, and incendiary bomb, experiments. Charges were made concerning certain other medical experiments, but they have been abandoned by the Prosecution.

Mrugowsky joined the NSDAP in 1930 and the SS in 1931. He ultimately rose to the rank of Senior Colonel in the Waffen-SS.

In 1938 Mrugowsky became a member of the Staff of the SS Medical Office, as hygienist. At the beginning of 1939, he founded the Hygiene Bacteriological Testing Station of the SS in Berlin, whose purpose was to combat epidemics in the SS garrison troops of the Waffen-SS. In 1940 the station was enlarged and renamed the "Hygiene Institute of the Waffen-SS." Mrugowsky became its Chief and at the same time Chief of the Office for Hygiene in the Medical Service of the Waffen-SS, under Genaken.

In his dual capacity Mrugowsky was answerable to Genaken in all questions concerning epidemic control and hygiene in the Waffen-SS, but as Chief of the Hygiene Institute, was military superior and commander of the Institute and its affiliated institutions with power to issue orders.

The Medical Service of the Waffen-SS was reorganized on 1 September 1943. Mrugowsky and the Hygiene Institute were transferred from under Genaken and became directly subordinated to Grawitz as Reichsarzt SS and Police. By this transfer Mrugowsky became Chief Hygienist under Grawitz, but remained Chief of the Hygiene Institute.

TYPHUS AND OTHER VACCINE EXPERIMENTS.

The details concerning the vaccine experiments conducted at Buchenwald Concentration camp have been related elsewhere in this judgment and hence the details need no further discussion.

As pointed out in the case against Haeffliger there is evidence

in the record that on 29 December 1941 a conference was held in Berlin attended by Wroblewski at which the decision was reached to begin research tests at Buchenwald to determine the efficacy of egg-yolk, and other, vaccines as protection against typhus. As a result of the conference such an experimental station was established at Buchenwald under the direction of Dr. Ding, with the defendant Hoven acting as his deputy.

Except for a few tests conducted early in 1942, all experiments were carried out in Block 46 -- so called clinical block of the station. In the autumn of 1943 a vaccine production department was established in Block 50 and this also came under the supervision of Dr. Ding-Schuler.

It would burden this judgment unnecessarily to narrate in detail the various tests and experiments carried out by DING at Buchenwald as a result of the decisions reached at higher levels. All of them conformed to a more or less uniform pattern, with certain groups of inmates being inoculated with vaccines, other groups (known as control groups) being given no immunization, and finally both groups being artificially infected with a virulent virus, and the results noted upon the experimental subjects.

As learn from the Ding Diary, the authenticity and reliability of which has been discussed at length in other portions of the judgment, the methods employed and the results obtained in at least some of the experiments.

For example: Typhus vaccination material Research Series IV, which began on 6 January 1942, 135 inmates were vaccinated with Weigl, Fox-Hopson-Gildesmeister, Behring Normal, or Behring Strong, vaccines; 10 persons were used for control. On 3 March 1942 all test subjects, including control persons, were artificially infected with virulent virus of rickettsia-proteuski furnished by the Robert Koch Institute. As a result occurred; three in the control group and two among the vaccinated subjects.

In typhus vaccine, reserved series IV^o, from 19 August to 4 September 1942, 40 persons were vaccinated with two different vaccines; 19 persons were used for control. Subsequently all were artificially infected with virulent virus; four deaths among the control persons occurred.

The entries in the diary concerning "Typhus vaccine experimental series VII" read as follows:

"29 May 43 - 18 June 1943: Carrying of typhus vaccination for infection with the following vaccine: 1) 20 persons with vaccine "Asid", 2) 20 persons with vaccine "Asid Adsorbat", 3) 20 persons with vaccine "Weigl" of the Institute for spotted fever and virus research of the supreme command, Army (OHB) Grazow (Sver)... All experimental persons got very serious typhus.

"-7 Sept. 43: Chart and case history completed. The experimental series was concluded. 53 deaths (22 with "Asid") (18 with "Asid Adsorbat") (9 with "Weigl") (4 control) 7 Sept. 43: Charts and case histories delivered to Berlin. Dr. Dine SS-Stephan Fischer."

Concerning "Typhus vaccine experimental series VIII" begun on 8 March 1943 the following entry appears in the diary:

"Suggested by Colonel U.C. of the air-corps, Prof. Isaac (Lieut. Capt) the vaccine "Kopenhagen" (Iggen-Wurms-Vaccine) produced from mouse liver by the national serum Institute in Kopenhagen was tested for its compatibility on humans. 20 persons were vaccinated for immunization by intramuscular injection... 10 persons were contemplated for control and comparison. 4 of the 30 persons were eliminated before the start of the artificial infection, be-

course of intermittent sickness...The remaining experimental persons were infected on 16 April 44 by subcutaneous injection of 1/20 cc typhus sick fresh blood...The following fell sick:
a) 17 persons immunized: 3 medium, 8 seriously;
b) 3 persons control, 2 medium, 7 seriously...
2 June 44: The experimental series was concluded. 13 June 44: Chart and case history completed and sent to Berlin. 6 deaths (3 Korschgen) (3 control). Dr. Ding."

"Typhus vaccine experimental series IX" began on 17 July 1944.

Twenty persons were immunized with the vaccine "Leimer", produced by the department for typhus and virus research of the Hygiene Institute of the "Haffen-SS; and for comparison, another group of 20 persons were immunized with vaccine "Weigl" produced from lice by the Army Supreme Command (OPM) in Dresden. Still another group of 20 persons were used for the control group. On 6 September 1944 the 60 experimental persons were infected with fresh blood "sick with typhus" which was injected into the upper arm. As a result all experimental persons became sick; some seriously. The narration of this experimental series closes with the cryptic reports: "4 Nov. 44: Chart and case history completed, 24 deaths (5 'Weigl') (19 Control). Dr. Schuler."

These entries are but few of the many which we have taken at random from the Ding diary, dealing with the sordid murders of defenseless victims in the name of Nazi medical science. Many more could be set forth if time and space permitted. An analysis of the Ding Diary discloses that no less than 129 concentration camp inmates were experimented on with typhus, at least 100 of whom died. And this toll of death takes no account of the vast increase of scores of so-called "exchange" persons who were artificially infected with typhus for the sole purpose of having at hand an ever-ready supply of fresh blood "sick with typhus", to be used to infect the experimental subjects.

There is some evidence to the effect that the camp inmates used as subjects in the first series submitted to being used as experimental subjects after being told that the experiments were harmless and that additional food would be given to volunteers. But these victims were not informed that they would be artificially infected with a highly virulent virus nor that they might die as a result. Certainly no one would seriously suggest that under the circumstances these men gave their legal consent to act as subjects. One does not ordinarily consent to be the special subject of a murder, and if one did, such consent would not absolve his slayer.

Later, when news of what was happening in Block 46 became generally known in the camp it was no longer possible to delude the inmates into offering themselves as victims. Thereupon, the shabby pretense of seeking volunteers was dropped and the experimental subjects were taken arbitrarily from a list of inmates prepared by the camp administration.

Other experiments were also carried out in Block 46 of Buchenwald to test typhoid, para-typhoid 1 and 2, and yellow fever.

As in the typhus experiments, non-consenting human subjects were used, including not only German criminal prisoners but also Poles, Russians and Frenchmen, both civilians and prisoners of war.

In all the typins experiments death resulted to many experimental subjects. As to each of these experiments the evidence is overwhelming that they were carried out by Ding under the orders or authority of the defendant Drugowsky.

POISON EXPERIMENTS:

On 11 September 1944 Drugowsky, Ding, and a certain Dr. Wildmann, carried out an experiment with aconitin nitrate projectiles in the Sachsenhausen Concentration Camp. Details of the experiment are fully explained by a "Top Secret" report of the sordid affair in a letter written by the defendant Drugowsky to the Criminological Institute, Berlin. The letter follows:

"Subject: Experiments with Aconitin nitrate Projectiles
To the Criminological Institute
attn: Dr. WILDMANN

Berlin

"In the presence of SS-Sturmbannführer Dr. DING, Dr. WILDMANN and the undersigned, experiments with Aconitin nitrate projectiles were conducted on 11 September 1944 on 5 persons who had been condemned to death. The projectiles in question were of a 7.65 mm caliber, filled with crystallized poison. The experimental subjects, in a lying position, were each shot in the upper part of the left thigh. The thighs of two of them were cleanly shot through. Two afterwards, no effect of the poison was to be observed. These two experimental subjects were therefore executed.

"The entrance of the projectile did not show any peculiarities. Evidently, the arteria femoralis of one of the subjects was injured. A light stream of blood issued from the wound. But the bleeding stopped after a short time. The loss of blood was estimated as having been at the most 3/4 of a liter, and consequently was on no account fatal.

"The symptoms of the poisoned tared showed a surprising similarity. At first no peculiarities appeared. After 20-25 minutes a motor agitation and a slight ptialism set in, but stopped again. After 40 to 45 minutes a stronger salivation set in. The poisoned persons swallowed repeatedly, but later the flow of saliva became so strong that it could not even be overcome by swallowing. Foamy saliva flowed from their mouths. Then choking and vomiting set in.

"After 50 minutes the pulse of two of them could no longer be felt. The third had a pulse rate of 76. After 65 minutes his blood pressure was 90/60. The sounds were extremely low. A reduction of blood pressure was evident.

"During the first hour of the experiment the pupils did not show any change. After 70 minutes the pupils of all three showed a medium dilation together with a retarded light reaction. Simultaneously, maximum respiration with heavy breathing inhalations set in. This subsided after a few minutes. The pupils contracted again and their reaction improved. After 85 minutes the patellar and achilles tendon reflexes of the poisoned subjects were negative. The abdominal reflexes of two of them were also negative. The upper abdominal reflexes of the third were still positive, while the lower were negative. After approximately 90 minutes, one of the subjects again started breathing heavily, this was accompanied by an increasing water thirst. Then the heavy breathing changed into a flat, accelerated respiration, accompanied by extreme nausea. One of the poisoned persons tried in vain to vomit. To do so he introduced four fingers of his hand up to the knuckles into his throat, but nevertheless could not vomit. His face was flushed.

"The other two experimental subjects had already early shown a pale face. The other symptoms were the same. The motor unrest increased so much that the persons flung themselves up, then down, rolled their eyes and made meaningless motions with their hands and arms. Finally the agitation subsided, the pupils dilated to the extreme, and the condemned lay motionless. Muscular spasms and urination were observed in one case. Death occurred 121, 123 and 129 minutes after entry of the projectile.

Summary: The projectiles filled with approximately 36 mg. of mercuric nitrate in solid form had, in spite of only insignificant injuries, a deadly effect after two hours. Poisoning showed 20 to 25 minutes after injury. The main reactions were: salivation, alteration of the pupils, negative tendon reflexes; motor unrest and extreme nausea.

W. GOEKE, SS-Lecturer
Oberlehrer and Office Chief.

The defendant attempts to meet this charge with the defense that the subjects used in this experiment were persons who had been condemned to death and that he, the enemy, had been appointed as their legal executioner.

One need but read the letter introduced in evidence to arrive at the conclusion that the defense has no validity. This was not a legal execution carried out in accordance with the laws and rules of war, but a criminal medical experiment wherein wounds were inflicted on prisoners with the sole end in view of determining the effectiveness of poisoned bullets as a means of taking life. The hapless victims of this dastardly torture were Russian prisoners of war, entitled to the protection afforded by the laws of civilized nations. As has been said, in substance, in this judgment: While under certain specific conditions the rules of law warfare may recognize the validity of an execution by shooting, it will not under any circumstances countenance the infliction

of death by poisoning or torture.

SULFANILAMIDE EXPERIMENTS:

That Drugowsky rendered assistance to Gebhardt in the sulfanilamide experiments at Ravensbrück is plainly shown by the record. Drugowsky put his laboratory and co-workers at Gebhardt's disposal. He furnished the cultures for the infections. It was on the suggestion of Drugowsky's office that wood shavings and ground glass were placed in the wounds of the subjects so that battle-field wounds would be more closely simulated.

GAS CEDER. EXPERIMENTS:

Toward the end of 1942a conference was held in the Military Medical Academy, Berlin, to discuss the effects of gas ceder serum on wounded persons. During the conference several cases were reported in which wounded soldiers who had received gas ceder serum injections in large quantities suddenly died without apparent reason. Drugowsky, who participated in the conference, expressed the possibility that perhaps the deaths had been due to the phenol content of the serum. As a step toward solving the problem Drugowsky ordered Dr. Ding Schuler, his subordinate, to take part in a euthanasia killing with phenol and to report on the results in detail.

In pursuance of the order given Dr. Ding and the defendant Hoven killed some of the concentration camp inmates at Puckewald with phenol injections and Ding reported his findings to his superior officer, Drugowsky, as required by the order.

POISONING, INVENTING GASES, AND OTHERS. JEWELRY EXPERIMENTS:

As to these items the Tribunal is of the view that the evidence is insufficient to sustain the charges.

It has been proved beyond a reasonable doubt that the defendant Drugowsky was a principal in, accessory to, ordered, abetted, took a consenting part in and was directly connected with plans and enterprises involving actual experiments on non-German nationals, without their consent, in the course of which experiments murders, brutalities,

crimes, tortures, atrocities and other inhumane acts were committed, to the extent that these crimes were not war crimes they were crimes against Humanity.

COUNT FOUR: Under Count four the indictment the defendant is charged with being a member of an organization declared criminal by the International Military Tribunal, namely, the SS.

The evidence proves that Dragovsky joined the NSDAP in 1930 and voluntarily became a member of the Waffen-SS in 1933. He remained in these organizations throughout the war. As a member of the Waffen-SS he was personally implicated in the commission of war crimes and crimes against humanity, as discussed in this judgment.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Joachim Dragovsky, is guilty, under Counts Two, Three, and Four of the Indictment.

POPPENDICK

The defendant Poppendick is charged under Counts Two and Three of the Indictment with personal responsibility for, and participation in, High Altitude, Freezing, Solaris, Sulfur dioxide, Decanter, Epidemic Jaundice, Sterilization, Typhus, and Poison, experiments. He is charged under Count Four with being a member of an organization declared criminal by the Judgment of the International Military Tribunal.

The charges with reference to High Altitude and Poison Experiments have been abandoned by the Prosecution and hence will not be considered further.

Poppendick studied medicine at several German universities from 1921 to 1926, and passed his state examination in December of the latter year. He joined the NSDAP on 1 March 1932 and the SS on 1 July following. He rose to the rank of Lieutenant Colonel in the SS and to the rank of Senior Colonel in the Waffen-SS. He was also a member of a Nazi SS Physicians Association. In August 1935 he was appointed as a physician in the Race and Settlement Office in Berlin, and became

Chief Physician of that office in 1941. He held the latter appointment until the Fall of 1944.

From 1 September 1939 until sometime in 1941 Poppendick was on active duty in the army as a surgeon. During the latter year he resumed his duties with the Race and Settlement Office in Berlin. Between 1939 and 1943 he performed some duties as a member of the staff of the Reich Physician SS and Police, Dr. Graebitz, taking care of special assignments.

In the fall of 1943 Poppendick was made Chief of the Personal Office of Graebitz, which position he retained until the end of the War.

RELEVANT EVIDENCE:

The evidence is that Poppendick gained knowledge of the freezing experiments conducted by Rascher at Dachau, as the result of a conference held between Rascher, Graebitz, and Poppendick on 13 January 1943, for the purpose of discussing certain phases of the research. The evidence does not prove beyond a reasonable doubt that Poppendick was originally connected with these experiments.

CLAIM OF RESPONSIBILITY:

The Prosecution contends that Poppendick is criminally responsible for the malaria experiments conducted by Dr. Schilling at Dachau. Dr. Flechner was engaged in the malaria experiments as a subordinate of Schilling. Flechner's diary, which is in evidence, contains a notation that on 23 May 1944 Graebitz, Poppendick, Flechner and Flechner, held a conference, which was probably encouraged by Poppendick three days previously by telephone. The subject of the conference is not disclosed by the diary entry, but it appears elsewhere in the diary that on 31 May 1944 Graebitz sanctioned Flechner's collaboration with Schilling.

Poppendick testified as a witness in his own behalf that he had heard that Schilling was carrying on special investigations at Dachau concerning immunity from malaria. He stated further that his knowledge of the nature of the investigations went no further. The record does not contradict his testimony.

The Tribunal finds that the evidence does not disclose beyond a reasonable doubt that Poppendick was criminally connected with the sulfamidase experiments.

SULFAMIDASE EXPERIMENTS:

Poppendick attended the Third Meeting of Consulting Surgeons at the Military Medical Academy, Berlin, and heard lectures by Gebhardt and Fischer concerning the sulfamidase experiments, which have been discussed elsewhere in this Judgment. Under date of 7 September 1942 he signed a certificate to a true copy of a report concerning sulfamidase experiments which had been conducted at Ravensbrück, made by Gebhardt to Grunitz. Grunitz forwarded the report, or a certified copy thereof, to Himmler.

We are of the opinion that Poppendick had knowledge of the original nature of the experiments conducted by Gebhardt and Fischer at Ravensbrück, but the defendant's criminal connection with any such experiments has not been proved by the evidence.

GERMAN EXP. RIGHTS:

The evidence does not disclose beyond a reasonable doubt that Poppendick was criminally implicated in these experiments.

THE 10 J. RIGHTS:

The evidence does not disclose beyond a reasonable doubt that Poppendick was criminally implicated in these experiments.

TERMINATION RIGHTS:

Poppendick was Chief Technician of the Thin Race and Settlement Office. The Judgment of the International Military Tribunal found that this office was active in carrying out schemes for termination of occupied territories according to the racial principles of the Nazi Party and were involved in the deportation of Jews and other foreign nationals. See the Trial of the Major War Criminals, Vol. 1, p. 270.

Testifying before this Tribunal, Poppendick stated that the Nazi racial policy was two-fold in aspect; one policy being positive, the other, negative, in character. The positive policy included many matters, one being the encouragement of German families to produce more children. The negative policy concerned the sterilization and extermination of non-Aryans, as well as other measures to reduce the non-Aryan population. According to Poppendick's testimony he was not concerned with the execution of the negative, but only with positive measures.

By letter dated 23 May 1941 Grawitz wrote to Himmler concerning a conference held on 27 May 1941 at which Dr. Glauberg was present and discussed his "new method of sterilization of inferior women without an operation."

Poppendick by letter dated 4 June 1941, which referred to a previous telephone conversation with Grawitz, wrote Reichsfuhrer Himmler stating that he was enclosing "a list of physicians who are prepared to perform the treatment of sterility" as requested by Himmler. The list referred to is evidently the same as was contained in a letter from Grawitz to Himmler, dated 30 May 1941, which stated: "In the following, I submit a list of specialists in charge of the treatment of sterility in women according to the method of Professor Glauberg."

It is shown by the evidence that Glauberg indeed carried out sterilization experiments on Jews and at Auschwitz. Similar experiments were carried out in other concentration camps by SS doctors who were subordinate to Grawitz. It is evident that Poppendick knew of these sterilization experiments, although it is not shown that he was criminally connected with them.

TIPUS EXPERIMENTS:

It is not clear from the evidence that Poppendick was originally connected with, or had knowledge of, the nature of the typhus experiments at Buchenwald, or the type of subjects upon which they were conducted.

INCENDIARY BOMB EXPERIMENTS:

There is some evidence in the record the effect that after incendiary bomb experiments were completed at Buchenwald, reports of the experiments were forwarded to Poppendick and Kropowsky. It is evident that through the reports Poppendick gained knowledge of the nature of the experiments, but the record fails to show original responsibility of the defendant in connection therewith.

PHLEGMONE EXPERIMENTS:

The evidence clearly proves Poppendick's knowledge of these experiments, but it fails to show the defendant's criminal connection therewith.

POLIO EXPERIMENTS:

The record does not show Poppendick's knowledge of or connection with these experiments.

HERMONE EXPERIMENTS:

The prosecution contends that the evidence shows Poppendick's criminal responsibility in connection with a series of experiments conducted at Buchenwald by Dr. Varnet, a Danish physician who claimed to have discovered a method of curing homosexuality by transplantation of an artificial gland.

Under date 15 July 1944 Poppendick wrote to Dr. Ding at the concentration camp Buchenwald, as follows:

"By request of the Reichsfuehrer SS the Danish Doctor SS Stuebenheim to Dr. Varnet has been given opportunity to continue his hormone research with the SS, particularly the development of his artificial gland. The Reichsfuehrer SS anticipates certain results from the treatment of homo-

sexuals with Varnet's artificial gland. The technical preparations have come to such a point that experiments on human beings can be started within a reasonable space of time.

"An SS Standartenführer Dr. Lolling informed me, the concentration camp Weimar-Buchenwald has been directed to make available 5 prisoners for SS Sturmbannführer Varnet's experiments. These prisoners will be made available to SS Sturmbannführer Varnet by the camp physician at any time.

"SS Sturmbannführer Varnet intends to go to Buchenwald shortly in order to make certain necessary preliminary tests on these prisoners. In case there will be special laboratory tests, you are requested to assist Varnet within the scope of your possibilities.

"Particulars on Varnet's research were sent today to the camp physician of the Weimar-Buchenwald for his information."

There is evidence that during the summer of 1944 Dr. Varnet conducted the experiments referred to in Poppendick's letter. However, the nationality of the prisoners used for these experiments is not shown, nor has it been proven beyond a reasonable doubt that the experiments were harmful or caused death, or injury to the experimental subjects.

We have given careful consideration to the evidence concerning the charges made by the Prosecution against the defendant Poppendick. Certainly the evidence raises a strong suspicion that he was involved in the experiments. He at least had notice of them and of their consequences. He knew also that they were being carried on by the SS of which he was and remained a member.

But this Tribunal, however, cannot conviction are

suspicion; evidence beyond a reasonable doubt is necessary. The evidence is insufficient to sustain guilt under Counts Two and Three of the Indictment.

MEMBERSHIP IN A CRIMINAL ORGANIZATION:

The defendant Poppendick is charged with membership in an organization declared criminal by the Judgment of the International Military Tribunal, namely, the SS. Poppendick joined the SS in July 1932. He remained in the SS voluntarily throughout the war, with actual knowledge of the fact that that organization was being used for the commission of acts not declared criminal by Control Council Law No. 10. He must, therefore, be found guilty under Count Four of the Indictment.

With reference to the nature of punishment which should be imposed under such circumstances the International Military Tribunal has made the following recommendation:

"1. That so far as possible throughout the four zones of occupation in Germany the classifications, sanctions, and penalties be standardized. Uniformity of treatment so far as practical should be a basic principle. This does not of course, mean that discretion in sentencing should not be vested in the court; but the discretion should be within fixed limits appropriate to the crime.

"2. Law No. 10 ... leaves punishment entirely in the discretion of the trial court even to the extent of inflicting the death penalty.

"The Denazification law of 5 March 1946, however, passed for Bavaria, Greater Hesse, and Wurttemberg-Baden, provides definite sentences for punishment in each type of offense. The Tribunal recommends that in no case should punishment imposed under Law No. 10 upon any member of an organization or group declared by the Tribunal to be criminal exceed the

punishment fixed by the DeNazification Law. No person should be punished under both laws."

See Trial of the Major War Criminals,
Vol. 1, p. 267.

In weighing the punishment, if any, which should be meted out to the defendant for his guilt by reason of the charge contained in Count Four of the Indictment, this Tribunal will give such consideration to the recommendations of the International Military Tribunal as may under the premises seem most and proper.

C O N C L U S I O N

Military Tribunal I finds the defendant Helmut Poppendick not guilty under Counts Two and Three of the Indictment; and finds and adjudges the defendant Helmut Poppendick guilty as charged in the Fourth Count of the Indictment.

Judge Sebring will continue reading the judgment.

JUDGE SEBRING:

SIEVERS

The defendant Sievers is charged under Counts Two and Three of the Indictment with special responsibility for, and participation in, High Altitude, Freezing, Malaria, Lost Gas, Seawater, Epidemic Jaundice, and spotted Fever experiments; and with extermination of Jews to complete a skeleton collection. Under Count Four of the Indictment he is charged with being a member of an organization declared criminal by the Judgment of the International Military Tribunal; namely, the S._s.

The Prosecution has abandoned the charge of participation in the Epidemic Jaundice experiments, and hence, this charge will not be considered further.

Sievers is one of the three defendants who are not physicians. He joined the NSDAP in 1925 and renewed his

membership in the Nazi Party in 1933. He joined the SS at the end of 1935 on the suggestion of Himmler. In this organization he obtained the rank of a Standartenfuhrer (Colonel).

From 1 July 1935 until the war ended Sievers was a member of Himmler's personal staff and Reich Business Manager of the Ahnenerbe Society. According to a statute of 1 January 1939, the purpose of the Ahnenerbe was to support scientific research concerning the culture and heritage of the Nordic race. The Board of Directors was composed of Himmler, as president, Dr. Most, as Curator, and Sievers, as the Business Manager. Sievers was responsible for the business organization and administration and the budget of the Ahnenerbe. The place of business was Berlin. Sievers supported and participated in the medical experiments which are the subject of the indictment, primarily through the Institute of Military Scientific Research which was established by order of Himmler, dated 7 July 1942 and was administratively attached to the Ahnenerbe.

On 1 January 1942 Himmler ordered the establishment of an entomological institute; in March 1942 the Institute Dr. Rascher in Dachau; and in the first month of the year 1942, the Institute Dr. Girt at Strasbourg. These subsequently became part of the Institute for Military Scientific Research.

Sievers was, for all practical purposes, the acting head of the Ahnenerbe. In this capacity he was subordinated to Himmler and regularly reported to him on the affairs of this Society. The top secret correspondence of Himmler concerning the Ahnenerbe was sent to Sievers. The charter of the Ahnenerbe defines Sievers' duties as follows:

"The Reich Business Manager handles the business affairs of the community, he is in charge of the business organization and administration. He is responsible for the

working up of the budget and for the administration of the treasury."

Sievers was responsible for the entire administrative problems of the secretary's office, bookkeeping and treasury. Besides that he also had to manage the Ahnenerbe-Publishing House. In June 1943 Professor Dr. Wentzel, who among other things was Chief of the Business Managing Advisory Council of the Reich Research Council, appointed Sievers as its deputy. By this act Sievers did not become a member of the Reich Research Council but held only an honorary position.

In a letter to the Defendant Rudolf Brandt, dated 28 January 1943 Sievers defines his position as Reich Business Manager of the Ahnenerbe as follows:

"My duty mostly consists in smoothing the way for the research men and seeing that the tasks ordered by the Reichsfuehrer-SS are carried out in the quickest possible way. On one thing, I certainly can form an opinion; that is, one who is doing the quickest job."

Sievers received orders directly from Hitler on matters of research assignments for the Ahnenerbe and he reported directly to Hitler on such experiments. Sievers devoted his efforts to obtaining the funds, materials and equipment needed by the research workers. The materials obtained by Sievers included concentration camps to be used as experimental subjects. When the experiments were under way, Sievers made certain that they were being performed in a satisfactory manner. In this connection, Sievers necessarily overrode his own independent judgement and had to familiarize himself with the details of such assignments.

REICH ALTITUDE EXPERIMENTS:

The details of these experiments are discussed in other portions of this Judgment. Sievers' activities in the high

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Court No. 1.

Altitude experiments are revealed clearly by the evidence. Rascher in a letter to Himmler dated 5 April 1942 states as follows:

"SS-Obersturmbannführer Sievers took a whole day off to watch some of the interesting standard experiments and may have given you a brief report... I am very much indebted to Obersturmbannführer Sievers as he has shown a very active interest in my work in every respect."

Sievers admitted that he reported to Himmler about his visit to Dachau. On the basis of the reports of Sievers and Rascher, Himmler authorized Rascher to continue the high altitude experiments in Dachau, in the course of which the evidence shows that 180 to 200 inmates were experimented upon; that 70 to 80 of them died. Rascher became associated with the Annenberber in March 1942 and during the entire time covered by the period of the high altitude experiments Rascher was attached to the Annenberber and performed the high altitude experiments with its assistance. On 20 July 1942, when the final report on high altitude experiments was submitted to Himmler, Rascher's name appeared on the letterhead of the Annenberber Institute for Military Scientific Research as shown by the cover letter, and the inclosed report bore the statement that the experiments had been carried out.



evidence in the record. In the Sievers' diary, there are numerous instances of Sievers' activities in the aid of Rascher. On 1 February 1943 Sievers noted efforts in obtaining supplies, implements, and chemicals for Rascher's experiments. On the 19th and 21st of January 1943 Sievers noted the problem of location. Rascher reported to Sievers periodically concerning the status and details of the freezing experiments.

It is plain from the record that the relationship of Sievers and Rascher in the performance of freezing experiments required Sievers to make the preliminary arrangements for the performance of the experiments, to familiarize himself with the progress of the experiments by personal inspection, to furnish necessary equipment and material, including human beings used during the freezing experiments to receive and make progress reports concerning Rascher, and to handle the matter of completion and publication of such reports. Basically, such activities constituted a performance of his duties as defined by Sievers in his letter of 28 January 1943 to Rudolf Brandt in which he stated that he smoothed the way for research workers and saw to it that Rascher's orders were carried out.

Under these facts Sievers is chargeable with the criminal activities in these experiments.

CRIMINAL ACTS:

Details of these experiments are given elsewhere in this judgment. These experiments were performed at Dachau by Schalline and Plotner. The evidence shows that Sievers had knowledge of the nature and purpose of these criminal enterprises and supported them in his official position.

LEGAL CONSIDERATIONS:

These experiments were conducted in the Ostroffler concentration

Camp under the supervision of Professor Hirt of the University of Strasbourg. The Anatomical Society, and the Defendant Sievers supported this research on behalf of the SS. The arrangements for the payment of the research subsidies of the Anatomical Society were made by Sievers. The defendant Sievers participated in these experiments by actively collaborating with the Defendants Karl Brandt and Rudolf Brandt, and with Hirt and his principal assistant, Dr. Zimmer. The record shows that Sievers was in correspondence with Hirt at least as early as January 1, 1942, and that he established contact between Himmler and Hirt.

In a letter of 11 September 1942 to Gluecks, Sievers wrote that the necessary conditions existed in Weizsaecker "for carrying out our military scientific research work." He requested that Gluecks issue the necessary authorization for Hirt, Zimmer and Wiselbeck to enter Weizsaecker, and that provision be made for their board and accommodation. The letter also stated:

"The experiments which are to be performed on prisoners are to be carried out in four rooms of an already existing medical barrack. Only slight changes in the construction of buildings are required, in particular the installation of a hood which can be produced with very little material. In accordance with attached plan of the construction management at Weizsaecker, I request that necessary orders be issued to speed the carrying out of the reconstruction. All the expenses arising out of our activity at Weizsaecker will be covered by this office."

In a memorandum of 3 November 1942 to the defendant Rudolf Brandt, Sievers complained about certain difficulties which had arisen in Weizsaecker because of the lack of cooperation from the camp officials. He stressed particularly the fact that the camp officials were asking that the experimental prisoners be paid for. A portion of the memorandum follows:

"When I think of our military research work conducted at the Concentration Camp Dachau, I must praise and call special attention to the generous and understanding way in which our work was furthered there and to the cooperation we were given. Arguments for prisoners was never discussed. It seems to me that at Weizsaecker they are trying to make as much money as possible out of this matter."

It was not concerning these experiments, it
was a matter of fact, for the sake of some fixed
scientific idea, but to be of practical help
to the broad force - and beyond that, to the
German people in a more or less emergency.

Grand was requested to give his help in a cordial fashion
in setting up the necessary conditions at Witzenhiller. The Defendant
Adolf Grand replied to this memorandum on 3 December 1942, and told
Silverman that he had had occasion to speak to him concerning these
facilities, and that they would be remedied.

On the basis of the witness's testimony that approximately 220
inches of German, Polish, Czech and French nationality were experi-
mented upon by Grand and his collaborators, and that approximately 5-
6000 of the experimental subjects were killed. During the
entire period of these experiments there was associated with the
German, British.

In April 1943, Grand and his collaborators, their 20,000 men,
the last experiment was a report entitled "Proposed treatment of
cancerous patients by X-ray". The report was submitted to the
Institute for "Medical Research" (German, Report No. 1) of the
Abwehr, the German Air Force, and the German Medical Service. Grand,
Silverman, and his collaborators had to last the and mentioned. Silver
provided several copies of this report. On 31 March 1944, after Grand
Grand had received a further letter giving the names of the
field of chemical warfare, Silverman informed Grand about the
work of the field of the report. This is proven by Silverman's
letter to Adolf Grand on 11 April 1944. Adolf Grand admitted that
the wording of the report was in clear that experiments had been
conducted on human beings.

Silverman testified that on 23 January 1944, he went to Witzenhiller
concentration camp and was told that the camp authorities concerning
the arrangements to be made for the last experiments. These arrange-
ments included the provision of instruments and equipment, etc.

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Sievers testified that the first of the experiments were harmful. On the visit of 29 January 1943, Sievers saw ten persons who had been subjected to 2 st experiments and watched wire change the hairless on one of the persons. Sievers testified that in March 1943 he asked Kurt whether any of the experimental subjects had suffered harm from the experiments and was told by Kurt that two of the experimental subjects had died due to other causes.

It is evident that Sievers was originally connected with these experiments.

THE 1943 EXPERIMENTS

These experiments were conducted at Dachau from July through September 1944. Details of these experiments are explained also in the document.

The function of the experiments was the performance of water experiments conducted at Dachau from July through September 1944, was chiefly in connection with the furnishing of space and equipment for the experiments. Sievers said that these experiments were conducted on behalf of the Wehrmacht. As a result of Sievers' request to similar through Wehrmacht for permission to perform these water experiments on subjects in Dachau, similar directed on 6 July 1944 that the experiments be conducted by Sievers and three other persons with other racial qualities and mental subjects. Sievers was advised by Himmler's office of the above authorization for experiments at the Dachau station at Dachau.

On 27th of June 1944, Sievers was replaced by Floetner as head of the Anatomical Society for Military Scientific Research at Dachau. Sievers, on the 28th of June, went to Dachau and conferred with Floetner of the Anatomical Society and an informant, Sigebach, who was to perform the experiments, concerning the location of the water experiments, and the availability of working space for them. Sievers agreed to supply working space in Floetner's Department and at the

Part I

top of comments from Schirack to Weverton, he requested Sievers
to make available a pool red concentration camp inmates for his research.
This is seen from a letter of 30 September 1943 from Sievers to Weverton
in which he states that he will be glad to assist, and that he is
actively contacting the proper source to have the "desired personnel"
placed at Weverton's disposal. As a result of Sievers' efforts, a hundred
inmates were sent from Auschwitz to Detmold for Weverton's experi-
ments. These were found to be suitable for experimentation, because of
their physical appearance condition. A second group of one hundred was
then made available. Some of these were used by him as experimental
subjects.

That the experiments were carried out in the appropriate experimental station in Baltimore, approved by records from monthly reports of the carp doctor in Baltimore. A number of deaths occurred upon application experimental subjects, - direct result of the treatment to which they were subjected.

LEGAL POINTS:

Without real reason introduced during the course of the trial to show that experiments to test the efficacy of a blood coagulant "poly-AD" was conducted at various locations by Moscher. The Siowens' Diary shows that Mosher's earliest few experiments or activities concerning the operation of "poly-AD" and that it is difficult to support to the conduct of the experiments.

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Delivery is planned under the Agreement with participation in the project of 112 "new" and "old" bones to complete a skeleton collection of the GSI in vicinity of the camp.

Response to a request by the doctor Rudolf Brandt, Sievers submitted to him on 2 February 1942 a report by Dr. Hirt of the University of Strasbourg on the desirability of securing a Jewish Skeleton collection. In this report, Hirt advocated outright murder of "Jewish Bolshevik Commissars" for the procurement of such a collection. On 27 February 1942 Rudolf Brandt informed Sievers that Hitler would support Hirt's work and would place everything necessary at his disposal. Brandt asked Sievers to inform Hirt accordingly and to report again on the subject. On 2 November 1942 Sievers requested Brandt to make the necessary arrangements with the Reich Main Security Office for providing 150 Jewish inmates from Auschwitz to carry out this plan. On 6 November Brandt informed Adolf Eichmann, the Chief of Office IV-B-4 (Jewish Affairs) of the Reich Main Security Office to put everything at Hirt's disposal which was necessary for the completion of the skeleton collection.

From Sievers' letter to Eichmann of 21 June 1943, it is apparent that SS Hauptsturmführer Bager, a collaborator of the Ahnenerbe Society carried out the preliminary work for the assembling of the skeleton collection in the Auschwitz Concentration Camp on 11 Jews, 30 Jews, 1 Pole, and 4 Austrians. The corpses of the victims were sent in three shipments to the Anatomical Institute of Hirt in the Strasbourg University.

When the Allied Forces were threatening to overrun Strasbourg early in September 1944, Sievers dispatched to Rudolf Brandt the following teletype message.

"Subject: Collection of Jewish Skeletons

"In conformity with the proposal of 2 February 1942 and with the consent of 23 February 1942...
SS-Sturmbauführer Professor Hirt viewed the collection of Jewish skeletons to the extent of the scientific work connected

herewith, the preparation of the skeletons is not yet completed. Hirt asks with respect to the time needed for 80 macinacs, and in case the endangering of Strasbourg has to be reckoned with, how to proceed with the collection situated in the dissecting-rooms of the Anatomical Institute. He is able to carry out the maceration and thus render them irretrievable. The, however, part of the entire work would have been partly done in vain, and it would be a great scientific loss for this unique collection, because macerated casts could not be saved afterwards. The skeleton collection as such is not conspicuous. Viscera could be declared as remnants of corpses, apparently left in the Anatomical Institute by the French, and ordered to be cremated. Decision on the following proposals is requested:

- 1) Collection can be preserved.
- 2) Collection is to be partly dissolved.
- 3) Entire collection is to be dissolved.

Glewers"

The pictures of the corpses and the dissecting rooms of the Institute, taken by the French authorities after the liberation of Strasbourg, point up the grim story of these deliberate murders to which Glewers was a party.

Glewers also from the first moment he received Hirt's report of 5 February 1945 that Hans Ramler was charged for the procurement of the skeleton collection. Nevertheless he actively collaborated in the project, both as employee of the Anatomie to make the preparatory selections for the concentration camp at Auschwitz, and provided

2 - 12 - transfer of the victims from Auschwitz to Katzeviller. He made arrangements that the collection be destroyed.

Sievers' guilt under this specification is shown without question.

Sievers offers two purported defenses to the charges against him: (1) That he acted pursuant to superior orders; (2) That he was a member of a resistance movement.

The first defense is wholly without merit. There is nothing to show that in the commission of these heinous crimes Sievers acted entirely pursuant to orders. True, the basic policies or projects which he carried through were decided upon by his superiors, but in the execution of the details Sievers had an unlimited power of discretion. The defendant says that in his position he could not have refused an assignment. The fact remains that the record shows the case of several men who did, and who have lived to tell about it.

Sievers' second matter of defense is equally untenable. In support of the defense Sievers offered evidence by which he hoped to prove that as early as 1933 he became a member of secret resistance movement which sought to overthrow the Nazi Government and to assassinate Hitler and Himmler; that as a leading member of the group, Sievers obtained the appointment as Reich Business Manager of the Amtshaus so that he could be close to Himmler and observe his movements; that in this position he became enmeshed in the revolting crimes, the subject matter of this indictment; that he remained as Business Manager under advice of his resistance leader to gain vital information which would hasten the day of the overthrow of the Nazi Government, and the liberation of the hapless peoples coming under its domination.

Admittedly all these things to be true, we cannot see how they can be used as a defense for Sievers. The fact remains that murders were committed with co-operation of the defendant against countless thousands of wretched concentration camp inmates who had not the

lightest means of resistance. Sievers directed the program by which these murders were committed.

It certainly is not the law that a resistance worker can commit no crime, and least of all, against the very people he is supposed to be protecting.

MEMBERSHIP IN CRIMINAL ORGANIZATION:

Under Count Four of the Indictment, Wolfram Sievers is charged with being a member of an organization declared criminal by the Judgment of the International Military Tribunal, namely, the SS. The Evidence shows that Wolfram Sievers became a member of the SS in 1935 and remained a member of that organization to the end of the war. As a member of the SS he was criminally implicated in the commission of War Crimes and Crimes against Humanity, as charged under Counts Two and Three of the Indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Wolfram Sievers guilty under Counts Two, Three and Four of the Indictment.

NOTE :

The defendant Rose is charged with special responsibility for, and participation in typhus and epidemic jaundice experiments.

The latter charge has been answered by the Prosecution.

Evidence was offered concerning Rose's criminal participation in malarial experiments at Dachau, although he was not named in the indictment as one of the defendants particularly charged with criminal responsibility in connection with malarial experiments. Questions presented by this situation will be discussed later.

The defendant Rose is a physician of large experience, for many years recognized as an expert in tropical diseases. He studied medicine at the universities of Berlin and Breslau, and was admitted to practice in the fall of 1921. After serving as interne in several

medical institutions, he received an appointment on the staff of the Robert Koch Institute in Berlin. After he served on the staff of Heidelberg University and for three years engaged in the private practice of medicine in Heidelberg, in 1925 he went to China, where he remained until 1935, occupying important positions as medical advisor to the Chinese Government. In 1935 he returned to Germany and became head of the Department for Tropical Medicine at the Robert Koch Institute in Berlin. Late in August 1939 he joined the Luftwaffe with the rank of First Lieutenant in the Medical Corps. In that service he was a commissioned Brigadier General in the Reserve and continued in active duty until the end of the war. He was Consultant in Hygiene and Tropical Medicine to the Chief of the Medical Service of the Luftwaffe. From 1941, he was also Consultant in the staff of Lieutenant Hagelin and was medical advisor to Dr. Gumbel in matters pertaining to tropical diseases. From the war were derived practically all of his ideas as his duties as Consultant to the Chief of the Medical Service of the Luftwaffe. From 1941, and after 1 January 1944, the defendant Commander.

WITNESS EXHIBIT:

Medical experiments in connection with malaria were carried out at Dachau concentration camp from February 1942 until the end of the war. These experiments were conducted under Dr. Klaus Schilling for the purpose of discovering a method of establishing immunity against malaria. During the course of the experiments probably as many as 1,500 inmates of the concentration camp were used as subjects of the experiments. Very many of these persons were nationals of countries other than Germany, who did not volunteer for the experiments. By credible evidence it is established that approximately 30 of the experimental subjects died as a direct result of the experiments and that many were maimed from causes directly flowing from the experiments,

Including non-German Nationals.

With reference to Rose's participation in these experiments the record shows the following: The defendant Rose had been acquainted with Schilling for a number of years, having been his successor in a position now held by Schilling in the Robert Koch Institute. Under date 3 February 1941, Rose writing to Schilling, then in Italy, referred to a letter received from Schilling, in which the latter requested "malaria spleens" (Spleens taken from the bodies of persons who had died from malaria). Rose in reply asked for information concerning the exact nature of the material desired. Schilling wrote 4 April 1942 from Duesen to Rose at Berlin, stating that he had inoculated a person intravenously with Sporocoides from the splivary glands of a female anopheles which Rose had sent him. The letter continues:

"For the second inoculation I use the Sporocoides material because I do not possess the 'Grossin Rose' in the anopheles yet. If you could find it possible to send me in the next days a few Anopheles infected with 'Strain Rose' (with the last inoculation two out of ten inoculated were

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effect, I would have the possibility to continue this experiment and I would naturally be very thankful to you for this new support of my work.

"The mosquito breeding and the experiments proceed satisfactorily and I am working now on six tertiary strains."

The letter bears the handwritten endorsement, "finished" 17 April 1942. L.S. PG 17/6," which evidence clearly reveals that Rose had complied with Schillan's request for material.

Schillan again wrote Rose from Dachau -alaria Station 5 July 1943, thanking Rose for this letter and "the consignment of Anopheles eggs." The letter continues:

"Five per cent of them brought on water went down and were therefore unfit for development; the rest of them hatched almost 100 per cent.

"Thanks to your solicitude, achieved again the completion of my bread."

"Despite this fact I accept with great pleasure your offer to send us your excess of eggs. Now did you dispatch this consignment. The result could not have been any better!"

"Please tell Madame Lanet, who is currently takes care of her bread with greater skill and better success than the prisoner August, my best thanks for her trouble."

"Remain my sincere thanks to you!"

The "Prisoner August" mentioned in the letter was doubtless the witness August "Lanet," who testified before this Tribunal concerning the malaria experiments. Rose wrote Schillan 27 July 1943 in answer to the latter's letter of 5 July 1943, stating he was glad the shipment of eggs had arrived in good order and had proved useful. He also gave the information that another shipment of anopheline eggs would follow.

In the fall of 1942 Rose was present at the "Gold Conference" held at Dachau and heard Holslochner deliver his lecture on the malaria experiments which had taken place at Dachau. Rose testified

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Just after the conference he talked with Salsbrenner, who told him that he was carrying out of physiological experiments on human beings exposed upon the S. (transmission) serial garden, adding that he hoped he never would receive another order to conduct such experiments.

It is impossible to believe that during the years 1942 and 1943 these were known of malaria experiments on human beings which were progressively atached under Schilling, or to credit these with innocence of knowledge that the malaria research was not confined solely to vaccinations designed for the purpose of immunizing the persons vaccinated. On the contrary it is clear that these well knew that human beings were being used in the concentration camp as subjects for medical experimentation.

However, no identification either of guilt or innocence will be entered against them for criminal participation in these experiments, for the following reason. In preparing counts two and three of the indictment the prosecution failed to trace the planning in such a manner as to charge all defendants with the commission of the crimes and crimes against humanity, generally, and at the same time to name in each sub-count the line with medical experiments only those defendants particularly connected with responsibility for each particular item.

In the face of this condition, in effect, a bill of particulars and also, in essence, a declaration to the defendants upon which they were entitled to rely in preparing their defenses, that only such persons as were actually present at the designated experiments would be called upon to defend against specific items. Included in the list of names of those defendants specifically charged with responsibility for the malaria experiments the name of one does not appear. It would be manifestly unfair to the defendant to find him guilty of an offense, if he was the defendant affirmatively exonerated and not charged.

It is clear from the evidence offered by the Prosecution that the evidence against the charges actually ordered against Rose. We think it had probative value as proof of the fact of Rose's knowledge of human experimentation upon concentration camp inmates.

TYPHUS EXPERIMENTS:

These experiments were carried out at Buchenwald and Dachau Concentration Camps, over a period extending from 1942 to 1945, in an attempt to procure a protective typhus vaccine.

In the experimental block at Buchenwald, with Dr. Ding in charge, inmates of the camp were infected with typhus for the purpose of procuring a continuous supply of fresh blood taken from persons suffering from typhus. Other inmates, some previously immunized and some not, were infected with typhus to demonstrate the efficacy of the vaccines. Full particulars of these experiments have been given elsewhere in the judgment.

These visited Buchenwald in company with Gildemeister of the Robert Koch Institute in the Spring of 1942. At this time Dr. Ding was absent, suffering from typhus as the result of an accidental infection received while infecting his experimental subjects. Rose inspected the experimental block where he saw many persons suffering from typhus. He said something like "these are the wards and looked at the clinical records of... persons with severe cases in the central camp and.... Gildemeister also said these were infected."

The War Diary, under date 15 April to 1 September 1942, referring to use of vaccines for immunization, states that 20 persons were inoculated with vaccine from Bucharest, with a note "this vaccine was made available by Professor Rose, who received it from the doctor - Professor Sabin from Bucharest." Rose denied that he ever sent vaccine to Wladimirsky or Ding for use at Buchenwald. Wladimirsky, from Berlin under date 16 May 1942 wrote Rose as follows:

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Dear Professor:

The French physician Dr. and Police Dr. presented to the execution of experiments to test typhus vaccines. May I therefore ask you to let me have the vaccines.

The other question which you raised, as to whether the body can be infected by a vaccinated typhus patient, will also be dealt with. In principle, this also has been approved. There are, however, still some difficulties at the moment about the practical execution, since we have at present no facilities for breeding lice.

Your suggestion to have a visit has been passed on to the Personnel Department of the Medical Office. It will be given consideration in due course.

From a note on the letter, it appears that Rose was absent from Berlin and was not expected to return until June. The letter, however, refers to previous contact with Rose and to oral discussions made by him which included proposed medical experiments on human beings. Rose in effect admitted that he had forwarded the Bucharest vaccine to be tested at Buchenwald.

At a meeting of German physicians of the Reichstag held in May 1943 Dr. Dine made a report in which he described the typhus experiments he had been performing at Buchenwald. He heard the report at the meeting and then and there objected strongly to the methods used by Dine in conducting his experiments. As may well be imagined this protest aroused considerable discussion among those present.

The Dine Diary shows that, subsequent to his meeting experiments were conducted at Buchenwald at the instigation of the defendant Rose. The entry under date of 6 March 1944 which refers to "Typhus Vaccine Experiments I Series III," reads as follows:

Tested by Edward M. G. of the air-corps, Prof. Rose (Dr. Hest) the vaccine "Typhus" (Typhus-vaccine) produced from the River by the national serum institute in Berlin. 30 persons were vaccinated for investigation by intramuscular injection...10 persons were contemplated for control and comparison. 4 of the 30 persons were eliminated before the start of the

artificial injection, because it later turned
out that... The remaining experimental persons
were infected on 16 April 44 by subcutaneous
injection of 1/20 cc of whole blood from
blood... The following fall sick: a) 17 persons
died: 9 medium, 8 seriously; b) 9 persons
control, 2 medium, 7 seriously... 2 Jan 44;
The experimental series was concluded. 13 Jan
44: Short and case history completed and sent
to Berlin. 6 deaths (3 experimental) (control).
Dr. Lang."

When on the witness stand Rose vigorously challenged the correctness of this entry in the "The Diary" and flatly denied that he had sent a Deponkows vaccine to anyone for use at Buchenwald. The prosecution met this challenge by offering in evidence a letter from Rose to Krawczyk dated 2 December 1943 in which Rose stated that he had at his disposal a number of samples of a new urine virus typhus vaccine, prepared from mice livers, which, in animal experiments, has been much more effective than the vaccine prepared from the lungs of mice. The letter continued:

To decide whether this first rate vaccine
should be used for prophylactic
vaccination of human beings against liver
typhus it would be desirable to know if this
vaccine shows in your and mine's experi-
mental arrangement at Buchenwald an effect
similar to that of the classic virus vaccine.

"Would you be able to give such an experi-
mental series a try? Unfortunately
I could not reach you over the phone. Con-
sidering the slowness of postal communication
I would be grateful for an answer by telephone..."

The letter shows on its face that it was forwarded by Krawczyk to Lang, who would be responsible for it on 21 February 1944.

On cross examination Lang was a statement with the letter he
stated its authenticity, and that he had asked that experiments be
conducted by Krawczyk at Buchenwald.

The letter and Rose's contribution clearly are authentic to the
...-D... at Buchenwald clearly a case from the
control.

The evidence also shows that Rose actively collaborated in the Typhus experiments carried out by Haagen at the Maltz-weller Concentration Camp for the benefit of the Luftwaffe.

From the exhibits in the record it appears that Rose and Haagen corresponded during the month of June 1943 concerning the production of a vaccine for typhus. Under date 5 June 1943 Haagen wrote to Rose amplifying a telephone conversation between the two and referring to a letter from a certain Giroud with references to a vaccine which had been used on rabbits. A few days later Rose replied, thanking him for his letters of 4 and 5 June and for "the prompt execution of my request." The record makes it plain that by use of the phrase "the prompt execution of my request," was meant a request made by Rose to the Chief of the Medical Service of the "Wehrmacht" for an order to produce typhus vaccine to be used by the armed forces in the eastern area.

Under the date 4 October 1943 Haagen again wrote Rose concerning his plans for vaccine production; making reference in the letter to a report made by Rose on the Ipsen vaccine. Haagen stated that he had already reported to Rose on the results of experiments with human beings, and expressed his regret that up to the date of the letter he had been unable to "perform infection experiments on the vaccinated persons." He also stated that he had requested the authorities to provide suitable persons for vaccination but had received no answer; that he was then vaccinating other human beings and would report results later. He concluded, by expressing the wish that used for experimental subjects upon whom to test vaccinations, and suggested that when subjects were procured, parallel tests should be made between the vaccine referred to in the letter, and the Ipsen tests.

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thing the only reasonable inference which can be drawn from this letter is that Seagen was proposing to test the efficacy of the vaccinations which he had completed, which could only be accomplished by infecting the vaccinated subjects with an avirulent pathogenic virus.

In a letter written by Rose and dated "in the field, 29 September 1943," directed to the Bahring Works at Harburg, La., Rose states that he is enclosing a memorandum regarding reports by Dr. Ipsen on his experience in the production of typhus vaccine. Copy of the report which Rose enclosed is in evidence, Rose stating therein that he had proposed, and Ipsen had promised, that a number of Ipsen's liver vaccine samples should be sent to Rose with the object of testing its protective efficacy on human beings whose lives were in special danger. Copies of this report were forwarded by Rose to several institutions, including that presided over by Seagen.

In January 1943, 102 prisoners were transported to Hatzweiler, of whom 17 died during the journey. The remainder were in such poor health that Haagen found them worthless for his experiments and procured additional healthy prisoners through Dr. Hirt, who was a member of the Ahnenerbe.

On 13 December 1943, writing among other things, "I request that in procuring persons for vaccination in your experiment, you request a corresponding number of persons for vaccination with Copenhagen vaccine. This has the advantage, as also appeared in the Buchenwald experiments, that the test of various vaccines simultaneously gives a clearer idea of their value than the test of one vaccine alone".

There is much other evidence connecting Rose with the series of experiments conducted by Haagen but we shall not burden the judgment further. It will be sufficient to say that the evidence proves conclusively that Rose was directly connected with the criminal experiments conducted by Haagen.

Whatever at the outset of the experimental program launched in the concentration camps Rose may have voiced some vigorous opposition. In the end, however, he overcame what scruples he had and knowingly took an active and consenting part in the program. He attempts to justify his actions on the ground that a State may validly order experiments to be carried out on persons condemned to death without regard to the fact that such persons may refuse to consent to submit themselves as experimental subjects. This defense entirely misses the point of the dominant issue. As we have pointed out in the case of Gebhardt: Whatever may be the condition of the law with reference to medical experiments conducted by or through a State and its own citizens, such a thing will not be sanctioned in international law when practiced upon citizens or subjects of an occupied territory.

We have indulged every presumption in favor of the defendant but his position lacks substance in the face of the overwhelming evidence against him. His own consciousness of turpitude is clearly disclosed by the statement made by him at the close of a vigorous cross-examination, in the following language:

"It was known to me that such experiments had earlier been carried out, although I basically objected to these experiments. This institution was built up in Germany and was approved by the State and covered by the State. At that moment I was in a position which perhaps corresponds to a lawyer who is, perhaps, a basical exponent of execution or death sentence. On occasion when he is dealing with leading officers of the government, or with lawyers during public conferences or meetings, he will do everything in his power to maintain his opinion on the subject and have it put into effect. If, however, he does not succeed, he stays in his profession and in his environment in spite of this. Under circumstances he may perhaps even be forced to pronounce such a death sentence himself, although he is basically opponent of that set-up."

The Tribunal finds that the defendant Rose was a principal in, accessory to, ordered, abetted, took a consenting part in, and was involved in, various and enterprises involving medical experiments on non-Germans without their consent, in the course of which murders, atrocities, cruelties, tortures, atrocities and other inhuman acts were committed. To the extent that these crimes were not war crimes, they were crimes against humanity.

CONCLUSION

THE TRIBUNAL finds and adjudges the defendant Gerhard Rose guilty under Counts Two and Three of the Indictment.

THE PRESIDING JUDGE: The Tribunal will now be in recess for a few moments.

(A recess was taken.)

THE PRESIDENT: Persons in the Courtroom will be seated.

The Tribunal is again in session.

THE PRESIDENT: The Tribunal has determined that the rest of the Judgment will be read this evening. The session will continue until the reading of the Judgment is completed. The sentences will be delivered tomorrow morning. At 10:00 o'clock tomorrow morning the Tribunal will reconvene in order to sentence the defendants.

JUDGE SEHRING: The Tribunal now comes to the cases RAFF, ROEBERG and WELTZ.

The defendants, Raff, Roeborg, and Welts are charged under Counts Two and Three of the Indictment with special responsibility for, and participation in, High Altitude Experiments.

The defendant Welts is also charged under Counts Two and Three with special responsibility for, and participation in, Freezing Experiments.

To the extent that the evidence in the record relates to the high altitude experiments, the cases of the three defendants will be considered together.

Defendant Raff specialized in the field of aviation medicine from the completion of his medical education at Berlin and Bonn in 1932. In January 1934 he was assigned to the German Experimental Institute for Aviation, a civilian agency, in order to establish a Department for Aviation Medicine. Later he became Chief of the Department.

Defendant Roeborg joined the RAFF in May 1933. From April 1936 until 1938 he interned as an assistant physician at a Berlin Hospital. On 1 January 1938 he joined the staff of the German Experimental Institute for Aviation as an associate assistant to the defendant Raff. He remained as a subordinate to Raff until the end of the war.

Defendant Welts for many years was a specialist in x-ray work. In the year 1935 he received an assignment as lecturer in the field of aviation medicine at the University of Munich. At the same time he instituted a small experimental department at the Physiological Institute

of the University of Munich, Felts lectured at the University until 1945; at the same time he did research work at the institute.

In the summer of 1941 the experimental department at the Physiological Institute, University of Munich, was taken over by the Luftwaffe and renamed the "Institute for Aviation Medicine in Munich." Felts was commissioned director of this institute by Hippke, then Chief of the Medical Inspectorate of the Luftwaffe. In his capacity as director of this institute, Felts was subordinated to Luftgau No. VII in Munich for disciplinary purposes. In scientific matters he was subordinated directly to Anthony, Chief of the Department for Aviation Medicine in the Office of the Medical Inspectorate of the Luftwaffe.

HIGH ALTITUDE EXPERIMENTS:

The evidence is overwhelming and not contradicted that experiments involving the effect of low air pressure on living human beings were conducted at Dachau from the latter part of February through May 1942. In some of these experiments great numbers of human subjects were killed under the most brutal and senseless conditions. A certain Dr. Sigmund RASCHER, Luftwaffe officer, was the prime mover in the experiments which resulted in the deaths of the subjects. The Prosecution maintains that Ruff, Rosberg, and Felts were criminally implicated in these experiments.

The guilt of the defendant Felts is said to arise by reason of the fact that, according to the prosecution's theory, Felts, as the dominant figure proposed the experiments, arranged for their conduct at Dachau, and brought the parties Ruff, Rosberg and Rascher together. The guilt of Ruff and Rosberg is charged by reason of the fact that they are said to have collaborated with Rascher in the conduct of the experiments. The evidence on the details of the matter appears to be as follows:

In the late summer of 1941, soon after the Institute Felts at Munich was taken over by the Luftwaffe, Hippke, Chief of the Medical Division of the Luftwaffe, approved, in principle, a research assignment for Felts in connection with the problem of rescue of aviators at high altitudes. This required the use of human experimental subjects. Felts

endeavored to secure volunteer subjects for the research from various sources; however, he was unsuccessful in his efforts.

Rascher, one of Hitler's inner satellites, was at the time an assistant at the Institute. He, Rascher, suggested the possibility of securing Hitler's consent to conducting the experiments at Dachau. Gotha seized upon the suggestion, and thereafter arrangements to that end were completed; Hitler giving his consent for experiments to be conducted on concentration camp inmates condemned to death, but only upon express condition that Rascher be included as one of the collaborators in the research.

Rascher was not an expert in aviation medicine. Ruff was the leading German scientist in this field, and Rostberg was his principal assistant. It fell to Ruff before he could proceed with his research these men should be persuaded to come into the undertaking. He visited Ruff in Berlin and explained the proposition. Thereafter Ruff and Rostberg came to Munich, where a conference was held with Gotha and Rascher to discuss the technical nature of the proposed experiments.

According to the testimony of Gotha, Ruff, and Rostberg, the basic consideration which impelled them to agree to the use of concentration camp inmates as subjects was the fact that the inmates were to be criminals condemned to death who were to receive some form of clemency in the event they survived the experiments. Rascher, who was active in the conference, assured the defendants that this became one of the conditions under which Hitler had authorized the use of camp inmates as experimental subjects.

The decisions reached at the conference were then made to Gippko, who gave his approval to the introduction of experiments at Dachau and issued an order that a weekly list of names of inmates who were in the possession of Ruff at the Department for Aviation Medicine, Berlin, should be transferred to Dachau for use in the project.

A second meeting was held at Dachau, attended by Ruff, Rostberg, Gotha, Rascher and the Camp Commander, to make the necessary arrangements

for the conduct of the experiments. The mobile low-pressure chamber was then brought to Berlin, and on 22 February 1942 the first series of experiments were instituted.

Volts was Rascher's superior; Rosenberg was subordinate to him. Rascher and Rosenberg were in general charge of the conduct of the experiments. There is no evidence to show that Volts was ever present at any of these experiments. Volts visited Rascher once only during the early part of the experiments, but thereafter remained in Berlin and received information concerning the progress of the experiments only through his subordinate, Rosenberg.

There is evidence from which it may reasonably be found that at the outset of the program personal friction developed between Volts and his subordinate Rascher. The testimony of Volts is that on several occasions he asked Rascher for reports on the progress of the experiments and each time Rascher told Volts that nothing had been started with reference to the research. Finally Volts ordered Rascher to make a report; whereupon Rascher showed his superior a telegram from Hitler which stated, in substance, that the experiments to be conducted by Rascher were to be treated as top secret matter and that reports were to be given to none other than Hitler. Because of this situation Volts had Rascher transferred out of his command to the DVI branch at Berlin. Defendant Rosenberg stated that these experiments had been stopped soon after their inception by the request of the Reich Air Ministry, because of friction between Volts and Rascher, and that the experiments were resumed only after Rascher had been transferred out of Volts' Institute.

While the evidence is convincingly plain that Volts participated in the initial arrangements for the experiments and brought all parties together, it is not so clear that illegal experiments were planned or carried out while Rascher was under Volts' command, or that he knew that experiments which Rascher might conduct in the future would be illegal criminal.

There appears to have been two distinct groups of prisoners used in the experimental series. One was a group of 10 to 15 inmates known in the camp as "exhibition patients" or "permanent experimental subjects". Most, if not all, of these were German nationals who were confined in the camp as criminal prisoners. These men were housed together and were well-fed and reasonably contented. None of them suffered death or injury as a result of the experiments. The other group consisted of 100 to 200 subjects picked at random from the camp and used in the experiments without their permission. Some 70 or 80 of these were killed during the course of the experiments.

The defendants Ruff and Rosenberg maintain that two separate and distinct experimental series were carried on at Dachau; one conducted by them with the use of the "exhibition subjects", relating to the problems of respite at high altitudes, in which no injuries occurred; the other conducted by Rascher on the large group of non-volunteers picked from the camp at random, to test the limits of human endurance at extremely high altitudes, in which experimental subjects in large numbers were killed.

The Prosecution submits that no such fine distinction may be drawn between the experiments said to have been conducted by Ruff and Rosenberg, on the one hand, and Rascher on the other, or in the prisoners who were used as the subjects of these experiments; that Rosenberg — and Ruff as his superior — were equal with Rascher for all experiments in which deaths to the human subjects resulted.

In support of this submission the members of the Prosecution cite the fact that Rascher was always present when Rosenberg was engaged in work at the altitude chamber; that on at least three occasions Rosenberg was at the chamber when deaths occurred to the so-called Rascher subjects, yet elected to continue the experiments. They point likewise to the fact that, in a secret preliminary report made by Rascher to Hitler which tells of deaths, Rascher mentions the name of Rosenberg as

being a collaborator in the research. Finally they point to the fact that, after the experiments were concluded, Rosenberg was recommended by Hascher and Slovins for the War Merit Cross, because of the work done by him at Dachau.

The issue on the question of the guilt or innocence of these defendants is close; we will be sure that fair were we not to concede this fact. It cannot be denied that there is much in the record to create at least a grave suspicion that the defendants Huff and Rosenberg were implicated in criminal experiments at Dachau. However, virtually all of the evidence which points in this direction is circumstantial in its nature. On the other hand, it cannot be denied that there is a certain consistency, a certain logic, in the story told by the defendants. And some of the story is corroborated in significant particulars by evidence offered by the prosecution.

The value of circumstantial evidence depends upon the conclusive nature and tendency of the circumstances relied on to establish any controverted fact. The circumstances must not only be consistent with guilt, but they must be inconsistent with innocence. Such evidence is insufficient when, having all the facts which the evidence tends to prove, some other reasonable hypothesis of innocence may still be true; for it is the actual exclusion of every other reasonable hypothesis but that of guilt which invests mere circumstances with the force of proof. Therefore, before a court will be warranted in finding a defendant guilty on circumstantial evidence alone, the evidence must show such a well-connected and logical chain of circumstances as to exclude all other reasonable hypotheses but that of the guilt of the defendant. Circumstantial evidence can never be a matter of logical definition. In the final analysis the issue is not whether the evidence is sufficient to satisfy beyond a reasonable doubt the understanding and conscience of those who, under their solemn oaths, as officers, must assume the responsibility for finding the facts.

On this particular specification it is the conviction of the Tribunal that the defendants Ruff, Rosenberg and Welts, must be found not guilty.

FREEZING EXPERIMENTS:

In addition to the high-altitude experiments, the defendant Welts is charged with freezing experiments likewise conducted at Dachau for the benefit of the German Luftwaffe. These began at the camp at the conclusion of the high-altitude experiments and were performed by Holmschner, Fiske, and Mascher, all of whom were officers in the medical services of the Luftwaffe. Non-German nationals were killed in these experiments.

We think it quite probable that Welts had knowledge of these experiments, but the evidence is not sufficient to prove that he participated in them.

C O N C L U S I O N

Military Tribunal I finds and adjudges that the defendant Siegfried Ruff is not guilty under either Counts Two or Three of the Indictment; and directs that he be released from custody under the Indictment when this Tribunal presently adjourns; and

Military Tribunal I finds and adjudges that the defendant Hans Wolfgang Rosenberg is not guilty under either Counts Two or Three of the Indictment; and directs that he be released from custody under the Indictment when this Tribunal presently adjourns; and

Military Tribunal I finds and adjudges that the defendant Georg August Welts is not guilty under either Counts Two or Three of the Indictment; and directs that he be released from custody under the Indictment when this Tribunal presently adjourns.

THE PRESIDENT: Judge Crawford will continue the reading of the Judgment.

JUDGE CRAWFORD: DEFENDANT BRACK.

"Should you, Reichsfuehrer, decide to choose this way in the interest of the preservation of labor, then Reichsleiter Bouhler would be prepared to place all physicians and other personnel needed for this work at your disposal. Likewise he requested me to inform you, that then I would have to order the apparatus so urgently needed with the greatest speed.

Heil Hitler!

Yours

Viktor Brack"

Brack testified from the witness stand that at the time he wrote this letter he had every confidence that Germany would win the war.

Brack's letter was answered by Himmler on 11 August 1942. In the reply Himmler directed that sterilization by means of x-rays be tried in at least one concentration camp in a series of experiments, and that Brack place at his disposal expert physicians to conduct the operations.

Gluecksmann, Brack's deputy, replied to Himmler's letter and stated that Brack had been transferred to an SS Division but that SS, Gluecksmann, as Brack's permanent deputy would "immediately take the necessary measures and get in touch with the chiefs of the main offices of the concentration camps."

A Polish Jew testified before the Tribunal that while confined in Auschwitz concentration camp he was marched to Birkenau and forcibly subjected to severe x-ray exposure and was castrated later in order that the effects of the x-ray could be studied.

A Jewish physician of Jewish descent who was confined at Auschwitz from September 1943 to January 1945, testified that near Auschwitz was Birkenau camp where people were sterilized by SS doctors. About 100 Polish Poles who had been sterilized at Birkenau were attended by the witness after the operations. Later this group were castrated by the camp physicians.

The record contains other evidence from which it is manifestly plain that sterilization by means of x-rays was attempted on groups of persons who were painfully injured thereby; and that castration followed the x-ray procedures.

Brack's part in the organization of the sterilization program with full knowledge that it would be put into execution, is conclusively known by the record.

EUTHANASIA PROGRAM

The euthanasia program, which was put into effect by a secret decree of Hitler on the day that Germany invaded Poland, has been discussed at length in the judgment in the case against Karl Brandt.

Brack testifies that he was basically opposed to this program and that, on occasion, he resisted certain of his Jewish friends to save them from its consequences. But be that as it may, the evidence is to the effect that Brack may have entertained toward individual members of the race, he was perfectly willing to and did act as a competent administrator in furthering the euthanasia program. After it had gotten under way, he wrote letters to various public officials, explaining to them how to keep the matter secret and to allay the public sentiment against the program.

This fact is shown by Brack's own statements. As a witness on the stand he testified that while at first he did not understand the full scope of the program, he decided, after a talk with Bouhler, to collaborate in carrying out the assignment and to execute Bouhler's orders.

He participated in the initial meetings called for the purpose of placing the project in operation. He was present at meetings of the doctors, as well as at administrative discussions. He often acted as Bouhler's representative, frequently making decisions which called for the exercise of personal judgment and a wide latitude of discretion.

Brack admitted that such were his activities in the program, that one might well have come to the conclusion that he was the influential man in euthanasia.

As Bouhler's deputy he addressed a meeting at Munich, where he explained the essence of Hitler's decree and mentioned the draft of a law which was being prepared to give complete legislative sanction to euthanasia - a law, incidentally, which was never in fact enacted. He represented Bouhler in April of 1941 in a meeting attended by Nazi judges and prosecutors. He testified that the Ministry of Justice had become considerably embarrassed because of the euthanasia program, and that he was present at the meeting for the purpose of imparting information concerning the salutary features of euthanasia to those who were present.

Brack gave the Tribunal considerable information concerning the method of extermination by euthanasia; stating that the program was so designed as to render the process inconspicuous and painless. In December 1940 or January 1941 Brack, Bouhler, Conti and some other doctors were present at the administration of euthanasia to four experimental subjects. The victims were led into a gas chamber which had been built to resemble a shower room. The patients were seated on benches and poisonous gas was let into the chamber. A few moments later the patients became drowsy and finally lapsed into a death sleep, without any knowledge they were being executed. On the basis of this execution Hitler decided that only carbon monoxide was to be used for killing the patients. According to Brack these persons were not Jews because Bouhler had explained to him "the philanthropic action of euthanasia should be extended only to Germans."

The evidence is plain that the euthanasia program explained by the defendant, gradually merged into the "Action 14 F 13; which, briefly stated, amounted to an extermination of concentration camp inmates by methods and agencies used in euthanasia. One of the prime motives

Berlin. This Department dealt with all questions concerning aviation medicine and reported to the Chief of the Medical Service of the Luftwaffe. When Schroeder became Chief of the Medical Service of the Luftwaffe on 1 January 1944, the defendant became the consultant for Aviation Medicine in Schroeder's office.

HIGH ALTITUDE EXPERIMENTS:

As shown elsewhere in the Judgment, high altitude experiments for the benefit of the Luftwaffe were conducted at Dachau Concentration Camp, on non-German nationals, beginning in February or March 1942. These experiments had been approved, in principle, at least, by Hiedke, Chief of the Medical Services of the Luftwaffe. A mobile low-pressure chamber which had been in the possession of the Department of Aviation Medicine, Berlin, was transferred to Dachau for use in the experiments. Concentration camp inmates were killed while being subjected to experiments conducted in the chamber.

During the time the experiments were conducted, defendant Becker-Freyssang was an assistant consultant to Anthony, Chief of the Referat for Aviation Medicine, Berlin. All low-pressure chambers owned by the Luftwaffe were under the general control of that office.

It is submitted by the Prosecution that the record shows that Becker-Freyssang was a principal in, accessory to, aided, abetted, took a consenting part in, and was connected with plans and enterprises involving the commission of these experiments.

The evidence upon this charge is not deemed sufficient to preponderate against a reasonable doubt as to the defendant's guilty participation in the experiments here involved.

PRELIMINARY EXPERIMENTS:

It is claimed that in June 1942, Becker-Freyssang was informed from certain of his official files that a meeting to consider experiments to investigate the treatment of persons who had been severely

cooled or frozen would be held in Nurnberg the following October (referred to as the "Gold Congress"). It is contended that the directive which set the experiment into motion was issued from the office of the Department for Aviation Medicine, that the funds and equipment were supplied by that office, and that Becker-Freyse had knowledge of the experiments, and that he admitted such knowledge.

As to all this, the proof is clear that Becker-Freyse was actively engaged in organizing and was present at the so-called "Gold Congress." But, even when the evidence discloses is needed to establish that he had any later part in or connection with the experiments themselves, or that he had any controlling relationship to their initial establishment.

TYPHUS EXPERIMENTS:

The evidence is insufficient to disclose any original responsibility of the defendant Becker-Freyse in connection with the typhus experiments.

SEA WATER EXPERIMENTS:

We have discussed the sea water experiments in that portion of our report which deals with the case of the defendant Schroeder. As was pointed out there, two methods of making sea water drinkable were available to the Luftwaffe. One, the so-called Schroeder method, had been previously tested and apparently produced potable sea water; the other, the so-called Barker process, which changed the taste of the sea water but did not reduce the salt content.

Becker-Freyse, as Chief Consultant for aviation medicine in the office of Schroeder arranged for a conference to be held in May 1944 to discuss the testing of these two methods. At the conference the defendant reported on various clinical experiments which had been conducted by certain von Sirany to test the Barker process. He came to the conclusion that the experiments had not been conducted under sufficiently realistic conditions of sea distress to make the findings conclusive.

As a result of the conference it was decided that new experiments

should be conducted.

We learn from the report of the meeting which is in evidence that two series of experiments were to be conducted. The first, a maximum period of six days during which one group of subjects would receive sea water processed with the Berke method; a second group, ordinary distilled water; a third group no water at all; and the fourth group, such water as would be available in the emergency sea distress kits then used. During the duration of the experiment all persons were to receive only an emergency sea diet such as provided for persons in distress at sea.

In addition to the 6-day experiment it was determined that a 12-day experiment should be run. The report on this series reads as follows:

"The men furnished with sea water and Berkeit, and as diet also the emergency sea rations.

"Duration of experiments: 12 days"

"Since in the opinion of the Chief of the Medical Service permanent damage to health, that is, the death of the experimental subjects was to be expected, as experimental subjects such persons should be used who will be put at the disposal of Reichsfuehrer SS."

The letter dated 7 June 1944 Schroeder requested the Reichsfuehrer SS to allow him to use concentration camp inmates for the sea water experiments. The letter stated, among other things, the following:

"As the experiments on human beings could thus far only be carried out for a period of four days, and as practical demands require a remedy for those who are in distress at sea up to 12 days, appropriate experiments are necessary.

"Candidates are 40 healthy test subjects, who must be available for 4 whole weeks. As it is known from previous experiments, that necessary labor details exist in the concentration camp Dachau, this camp would be very suitable...."

When on the stand as a witness the defendant Becker-Brayung admitted

that he prepared the substance of the letter for Schroeder's dictation and signature.

Through actual knowledge of the nature of the Berka process and the fact that if used over prolonged periods it would cause suffering and death, Becker-Freyseing counselled and conferred with his Chief concerning the necessity for experiments wherein the process would be used. He gave advice upon the exact procedure to be used in the 12-day experimental series. He framed the letter to Himmler requesting the use of concentration camp inmates at Dachau for experimental subjects. He called the defendant Bai Block to Berlin to explain to him the details and purpose of the experiments. He issued the order under which Bai Block went to Dachau to begin the experiments. He received Bai Block's report after the experimental series had been concluded.

Through all stages of the affair, from its inception to its conclusion, the defendant knew of the dangerous nature of the experiments. He knew that deaths were reasonably to be expected. He knew that concentration camp inmates were to be used as experimental subjects. It is impossible to believe that he supposed that the inmates of the camp, who were to be furnished by Himmler, were to be volunteers. The entire language of the letter which was written to Himmler asking for experimental subjects entirely refutes such implication.

The evidence shows conclusively that Germans of various nationalities were used as experimental subjects. They were former inmates of Auschwitz who had been tricked into coming to Dachau under the promise that they were to be used in a special labor battalion. When they arrived at Dachau they were detailed to the gas chamber experiments without their voluntary consent being asked or given.

During the course of the experiment many of the experimental subjects were treated brutally and endured much pain and suffering.

It is apparent from the evidence that Becker-Freyseing was criminally

connected with the experiments, and that the experiments were essentially criminal in their nature. To the extent that the crimes committed by him or under his authority were not war crimes, they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Hermann Becker-Freytag guilty under Counts Two and Three of the Indictment.

SCHAEFER

The defendant Schaefer is charged under Counts Two and Three of the Indictment with personal responsibility for and participation in seawater experiments.

Konrad Schaefer was a scientist whose special field of research was chemical warfare. In November 1941 he was drafted into the Luftwaffe. In spring of the following year he was transferred to the Luftwaffe Replacement Depot in Salow and from there to the Luftwaffe base at Frankfurt on the Oder. In summer of 1942 he was transferred to Berlin and assigned to the staff of the Research Institute for Aviation Medicine. His chief assignment at the Institute was to do research on the problem of an emergency for the Luftwaffe. This included research work on various methods to render sea water potable. Schaefer remained in his position at the Institute without ever having attained officer rank.

In May 1942 the defendant was ordered to be present at a meeting to be held at the German Air Ministry in Berlin, called to consider further research on making sea water potable. Some months previous to the meeting, Schaefer had developed a process which actually precipitated the salts from sea water, but it was thought by the Chief of the Luftwaffe Medical Service to be too bulky and expensive for military use by the Luftwaffe.

Present were Schaefer, Becker-Freytag, research advisor to Schroeder, Christensen, of the Technical Bureau of the Reich Ministry of Aviation, and others. The subject of discussion was the feasibility of using the

HOVEN

The Accused Hoven is charged under Counts Two and Three of the Indictment with special responsibility for and participation in Typhus and other vaccine experiments; gas chamber experiments; and the euthanasia program. In Count Four he is charged with being a member, after 1 September 1939, of an organization declared criminal by the International Military Tribunal.

Hoven joined the SS in 1934 and the Nazi party in 1937. Soon after the outbreak of the war he joined the Waffen-SS. In October 1939 he became assistant medical officer in the SS Hospital at Buchenwald Concentration Camp. In 1941 he was appointed medical officer in charge of the SS troops stationed in the camp. He became Assistant Medical Officer at the camp inmate hospital and in July 1942 he became Chief Camp Physician. He remained in the latter position until September 1943, at that time he was arrested on the order of the SS Police Court in Kassel for having allegedly murdered an SS non-commissioned officer who was a dangerous witness against Koch, the camp commander.

TYPHUS AND OTHER VACCINE EXPERIMENTS:

The vaccine experiments with which Hoven is charged were conducted at Buchenwald under the supervision of SS Sturmbannführer Dr. Ding alias Ding-Schulz. They have already been described at length in other portions of this Indictment.

The Prosecution has shown beyond a reasonable doubt that Hoven was a criminal participant in these experiments. In collaboration with the SS camp administration he helped select the concentration camp inmates who became the experimental subjects. During the course of selection he

exercised the right to include some prisoners and to reject others. While perhaps not empowered to initiate new series of experiments on his own responsibility -- that apparently being a power which only Ding could exercise -- the defendant worked with Ding on experiments then in progress. He supervised the preparation of diary notes, fever charts, and report sheets of the experiments. Occasionally he injected some of the subjects with the vaccine. He acted as Ding's deputy in the conduct of the experiments. He was in command of Experimental Block 46 in Ding's absence. During the period of Hoven's activity in the experimental station no less than 100 inmates were killed as a result of the typhus experiments. Many of these victims were non-German nationals who had not given their consent to be used as experimental subjects.

ALL OTHER WITNESSES:

It is asserted in an affidavit made by Dr. Ding-Schuler, who was in charge of Blocks 46 and 50, Buchenwald, that toward the end of 1942 a conference was held in the Military Medical Academy, Berlin, for the purpose of discussing the fatal effects of gas odour serum on wounded persons. During the conference Killian of the Army Medical Inspectorate and the defendant Hingrowsky reported several cases in which wounded soldiers who had received odour serum injections in high quantities died suddenly without apparent reason. Hingrowsky suspected that the fatalities were due to the phenol content of the serum. To help solve the problem Hingrowsky ordered Ding to take part in a euthanasia killing with phenol and to report on the results in detail. A few days later Hoven, in the presence of Ding, gave

phenol injections to several of the concentration camp inmates with the result that they died instantly. In accordance with instructions Ding made a report of the killings to his superior officer.

The fact that Hoven engaged in phenol killings is substantiated by an affidavit voluntarily made by Hoven himself prior to the trial which was received in evidence as a part of the case of the prosecution. In the affidavit Hoven makes the following statement: "There were many prisoners who were jealous of the positions held by a few political prisoners and tried to discredit them. These traitors were immediately killed and I was later notified in order to make out statements that they had died of natural causes.

In some instances I supervised the killings of these unworthy inmates by injections of phenol at the request of the inmates, in the hospital assisted by several inmates. Dr. Ding came once and said I was not doing it correctly, and performed some of the injections himself, killing three inmates who died within a minute.

"The total number of traitors killed was about 150, of whom 60 were killed by phenol injections, either by myself or under my supervision, and the rest were killed by beating, etc. by the inmates."

EUTHANASIA PROGRAM:

The details of the euthanasia program have been discussed by us at length in dealing with the charges against certain other defendants; consequently they will not be repeated here.

In the Hoven pre-trial affidavit, portions of which were quoted while discussing gas and serum

experimentation, the defendant gives us a partial picture of the euthanasia program, in the following statement:

"In 1941 Koch, the Camp Commander, called all the important SS officials of the camp together and informed them that he had received a secret order from Himmler that all mentally and physically deficient inmates should be killed, including Jews. 300 to 400 Jewish prisoners of different nationalities were sent to the 'Euthanasia Station' at Bernburg for extermination. I was ordered to issue falsified statements of the death of these Jews, and obeyed that order. This action was known as '14 f' '13.'"

When the defendant Hoven took the stand in his own defense he attempted to discredit the effects of the statements contained in his affidavit by testifying that the affidavit was taken as a result of interrogations propounded to him by the Prosecution in English and that he was not sufficiently familiar with the language to be fully aware of the inculcatory nature of the statements he was making.

The Tribunal is not impressed with these assertions. The evidence shows that prior to the war the defendant had lived for several years in the United States, where he had acquired at least an average understanding and comprehension of the English language. When he was on the witness stand the Tribunal questioned him at length in order to ascertain the extent of his knowledge of English, and in particular, of his understanding of the meaning of the words used by him in his affidavit. As a result of this questioning the Tribunal is convinced that no undue or improper advantage was taken of the defendant in procuring the affidavit, and that at the time

of his interrogation by the Prosecution Hoven knew and understood perfectly well the nature of the statements he was making.

The facts contained in the Hoven affidavit were convincingly substantiated by other evidence in the record; the only real difference being that the evidence shows the defendant to have been guilty of even many hundreds more murders than he admitted by him in his affidavit. As stated, in German, by one of the Prosecution witnesses in connection with the subject: Hoven personally killed inmates in the hospital barracks by injection. These people were mostly Jewish, Czech, Polish and exhausted. Hoven must have killed 1,000 of every nationality. These inmates were killed on the initiative of Hoven with no request from the illegal camp administration or the political prisoners.

It is obvious from the evidence that throughout his entire service at Buchenwald, Hoven attempted to serve three masters: The SS Camp Administration, the criminal prisoners, and the political prisoners of the camp. As a result he became criminally implicated in murders committed by all three groups involving the deaths of non-German nationals, some of whom were prisoners of war and others of whom were civilians. In addition to these, he committed murders on his own individual responsibility. There can be nothing said in mitigation of such conduct. To the extent that the crimes committed by Hoven were not war crimes, they were crimes against humanity.

MEMBERSHIP IN CRIMINAL ORGANIZATION:

Under Count Four of the Indictment the defendant is charged with being a member of an organization

declared criminal by the Judgment of the International Military Tribunal, namely, the SS. The evidence shows that Hoven became a member of the SS in 1934, and remained in this organization throughout the war. As a member of the SS he was originally implicated in the commission of War Crimes and Crimes against Humanity, as charged under Counts Two and Three of the Indictment.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Waldemar Hoven guilty, under Counts Two, Three and Four of the Indictment.

THE PRESIDENT: Judge Sebring will continue with the reading of the judgment.

JUDGE SEBRING:

BEIGLBECK

"The defendant Beiglbeck is charged with personal responsibility for, and participation in, seawater experiments.

The defendant Beiglbeck, an Austrian citizen, was a Captain in the Medical Department of the German Air Force from May 1941 until the end of the war. In June, 1944, while stationed at the hospital for Paratroopers at Terzio, Italy, he received orders from his military and medical superior, defendant Becker-Freysang, to carry out seawater experiments at Dachau.

The seawater experiments have been described in detail in that portions of the Judgment dealing with defendants Schroeder and Becker-Freysang.

The defendant Beiglbeck testified that he reported to Berlin at the end of June 1944, where Becker-Freysang told him the nature and purpose of the experiments. Upon that trip he also reported to and talked with the defendant Schroeder. From these conversations he learned that the prime purpose of the experiments was to test the process developed by Berka for making seawater potable and also to ascertain whether it would be better for a shipwrecked person in distress at sea to go completely without seawater or to drink small quantities thereof.

It appears from the record that the persons used in the experiments were 40 Gypsies of various nationalities who had been formerly at Auschwitz but who had been brought to Dachau under the pretext that they were to be assigned to various work details. These persons had been imprisoned in the concentration camps on the basis that they were "Asocial persons." Nothing was said to them about being used as human subjects in medical experiments. When they reached Dachau some of them were told that they were being assigned to the seawater experiment detail.

Beigloek testified that before beginning the experiments he called the subjects together and told them the purpose of the experiments and asked them if they wanted to participate. He did not tell them the duration of the experiments, or that they could withdraw if ever they reached the physical or mental state that continuation of the experiment should seem to them to be impossible. The evidence is that none of the experimental subjects felt that they dared refuse becoming experimental subjects for fear of unpleasant consequences if they voiced any objections.

The defendant testified that pursuant to the order that had been given him, it was necessary that the subjects to thirst for a continuous period; and that the question of when, if ever, they should be relieved during the course of the experiment was a matter which he reserved for his own decision.

During the course of the experiments the subjects were locked in a room. As to this phase of the program the defendant testified that "They should have been locked in a lot better than they were because then they would have had no opportunity at all to get fresh water on the side."

At the trial the defendant produced clinical charts which he said were made during the course of the experiments and which, according to the defendant, showed that the subjects did not suffer injury. On cross-examination the defendant admitted that some of the charts had been altered by him since he reached Nurnberg in order to present a more favorable picture of the experiments.

We do not think it necessary to discuss in detail what is shown by the charts either before or after the fraudulent alterations. We think it only necessary to say that a man who intends to rely on written evidence at a trial does not fraudulently alter such evidence from any honest or worthy motive.

The defendant claims that he was at all times extremely reluctant to perform the experiments with which he is charged, and did so only

out of his sense of obedience as a soldier to superior authority. Under Control Council Law No. 10 such fact does not constitute but will be considered, if at all, only in mitigation of sentence.

In our view the experimental subjects were treated brutally. Many of them endured much pain and suffering, although from the evidence we cannot find that any deaths occurred among the experimental subjects.

It is apparent from the evidence that the experiments were essentially criminal in their nature, and that non-German nationals were used without their consent as experimental subjects. To the extent that the crimes committed by defendant Beiglböck were not war crimes they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges the defendant Wilhelm Beiglböck guilty under Counts Two and Three of the Indictment.

We will now turn to the case of Fokorny.

FOKORNY

The defendant Fokorny is charged with special responsibility for and participation in criminal sterilization experiments, as set forth in Counts Two and Three of the indictment.

It is conceded by the prosecution that in contradistinction to all other defendants the defendant Fokorny never held and position of responsibility in the Party or State Hierarchy of Nazi Germany. Neither was he a member of the Nazi Party or of the SS. Formerly a Czechoslovakian citizen, he became a citizen of the Greater German Reich, under the Munich Agreement of October 1938. During the war he served as a medical officer in the German Army and attained the rank of captain.

The only direct evidence bearing on the guilt of the defendant is a letter written by Fokorny to Himmler in October 1941, suggesting the use of a drug, caladium seguinum, as a possible means of medical

- 2.) Multiplying the plant (easily cultivated in greenhouses!)
- 3.) Immediate research on human beings (criminals!) in order to determine the dose and length of the treatment.
- 4.) quick research of the constitutional formula of the effective chemical substance in order to
- 5.) produce it synthetically if possible.

"As German physician and Chief physician of the reserves of the German Wehrmacht, retired, 9d.F.a.D), I undertake to keep secret the purposes as suggested by me in this letter.

Heil Hitler!

Signed: Dr. Folorny
Specialist for skin
and venereal diseases."

Konotau, October 1941.

The defendant has attempted to explain his motives for sending the letter by accepting that for some time prior to its transmittal he had known of Himmler's intentions to sterilize all Jews and inhabitants of the Eastern territories and had hoped to find some means of preventing the execution of this dreadful program. He knew, because of his special experience as a specialist in skin and venereal diseases, that sterilization of human beings could not be effected by the administration of caladium seguinum. He thought, however, that if the articles written by Madans could be brought to the attention to Himmler the latter might turn his attentions to the unobtrusive method for sterilization which had been suggested by the articles and thus be diverted, at least temporarily, from continuing his program of castration and sterilization by well-known, tried and tested methods. Therefore the letter was written — so explained the defendant — not for the purpose of furthering, but of sabotaging the program.

We are not impressed with the defense which has been tendered by the defendant and have great difficulty in believing that he was motivated by the high purposes which he asserted impelled him to write the letter. Rather are we inclined to the view that the letter was written

by Polorny for very different and more personal reasons.

Be that however as it may, every defendant is presumed to be innocent until he has been proven guilty. In the case of Polorny the Prosecution has failed to sustain the burden. As monstrous and base as the suggestions in the letter are, there is not the slightest evidence that any steps were ever taken to put them into execution by human experimentation. We find, therefore, that the defendant must be acquitted — not because of the defense tendered, but in spite of it.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Adolf Polorny is not guilty of the charges contained in the Indictment, and directs that he be discharged from custody under the Indictment when the Tribunal presently adjourns.

JUDGE SAVERING: Judge Crawford will continue with the reading of the judgment.

JUDGE CRAWFORD: The case of the Defendant Oberhueser

OBERHUESER

The defendant Oberhueser is charged under Counts Two and Three of the indictment with Sulfanilamide, Bone, Muscle and Nerve Regeneration and Bone Transplantation, and Sterilization Experiments.

The charge of participation in the sterilization experiments has been abandoned by the prosecution and will not be considered further.

The defendant Oberhueser joined the League of German Girls (B. D. M.) in 1935 and held the rank of "Block Leader". In August 1937 she became a member of the Nazi Party. She was also a member of the Association of National Socialist Physicians. She volunteered for the position of a camp doctor in the women's department of the Ravensbrück Concentration Camp in 1940, and remained there until June 1943. She was then given a position as assistant physician in the Hohenlychen Hospital under the defendant Gebhardt.

Regarding her connection with both the Sulfanilamide and the Bone,

Muscle and Nerve Regeneration and Bone Transplantation Experiments, the same facts are applicable as were presented in the cases of defendants Fischer and Gebhardt. Fischer and Oberhouser were Gebhardt's active agents in carrying out these experiments. They did a great deal of the actual work. They personally committed atrocities involved therein.

A few facts produced in evidence regarding the special work of defendant Oberhouser in these experiments are entitled to comment.

Oberhouser was thoroughly aware of the nature and purpose of the experiments. She aided in the selection of the subjects, gave them physical examinations, and otherwise prepared them for the operation table. She was present in the operating room at the time of the operations and assisted in the operational procedures. She faithfully cooperated with Gebhardt and Fischer at the conclusion of each operation by deliberately neglecting the patients so that the wounds which had been given the subjects would reach the maximum degree of infection.

Testimony of the witness Zofia Maczka, an X-ray technician in the camp at Ravensbruck, is that deaths occurred among the experimental subjects. Most of these deaths could have been averted by proper post-operative care or proper treatment or by the amputation of badly infected members.

In one instance — the case of a Krystyna Dabke — small pieces of bone were cut from both legs of the subject. Witness Maczka testified that she read on the card of the patient that on one leg periosteum had been left and on the other leg periosteum had been removed to other with bone. Because she was of the opinion that the purpose of the experiment had been to check regeneration, the witness asked the defendant Oberhouser, "How do you expect to get regeneration of bone if the bones are with periosteum?" To this the defendant replied, "That is just what we want to check."

Non-consenting non-German nationals were used in at least some

of the experiments. Many of them died as a result of the experiments. To the extent that the crimes committed were not war crimes, they were crimes against humanity.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Oberhueser is guilty under Counts Two and Three of the indictment.

JUDGE SEVERING: The case of the Defendant Fischer.

FISCHER

The defendant Fischer is charged under Counts Two and Three with Sulfanilamide and Bone, Muscle and Nerve Regeneration and Bone Transplantation Experiments.

Fritz Fischer joined the Allgemeine-SS in February 1934 and the NSDAP in 1939. In the latter year he joined the Waffen-SS and was assigned to the SS unit in the Hohenlychen Hospital as a physician subordinated to the defendant Gebhardt. In June 1940 he was transferred to the SS regiment Leibstandarte "Adolf Hitler", and returned the same year to Hohenlychen as assistant physician to Gebhardt, where he remained until May 1943. He then served as a surgeon on both the Eastern and Western Fronts and, after having been wounded in August 1944, came back to Hohenlychen as a patient. In December 1944 he was assigned to the Charity Hospital in Berlin, but returned again to Hohenlychen as Gebhardt's assistant in April 1945. In the Waffen-SS he attained the rank of Sturmbannfuhrer (Major).

SULFANILAMIDE EXPERIMENTS:

Gebhardt, as shown elsewhere in this Judgment, was in personal charge of the work being done in this field by his assistant Fritz Fischer. That the latter performed most of the sulfanilamide experimental work is not denied by him; on the contrary, he freely admits it. The defense offered in his behalf is twofold; that the experimental subjects were to have alleged death sentences, then impending, commuted to something less severe in the event they survived the experiments; and that defendant Fischer was acting under military orders from his superior officer Professor Gebhardt. These defenses have been

considered rejected in other parts of this Judgment.

It is true, however, that paragraph 4 (b) of Article II of Control Council Law No. 10 reads:

"The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for crime, but may be considered in mitigation."

It is unnecessary to take up and answer all the arguments that might be presented upon whether or not Fischer is entitled to a mitigation of sentence due to the circumstances claimed as the basis of such mitigation. He acted with the most complete knowledge that what he was doing was fundamentally criminal, even though directed by a superior. Under the circumstances his defense must be rejected, and he must be held to be guilty as charged.

BOB, MUSEL AND NERVE REGULATION AND BOB TRANSPLANTATION:

The experiments have been discussed in connection with the case of the defendant Gebhardt, who was assisted therein by the defendant Fischer. Testimony and exhibits now constituting parts of the record in this case reveal that Fischer has offered no substantial defense to the charge. Indeed, criminal connection with these experiments is admitted, and the admission includes the defendant's own testimony that he personally performed at least some of the operations. It only remains for the Tribunal to hold that on the specification above mentioned the defendant Fischer is guilty.

To the extent that the crimes committed by defendant Fischer were not war crimes they were crimes against humanity.

MEMBER OF THE CRIMINAL ORGANIZATION

Under Count Four of the Indictment Fritz Fischer is charged with being a member of an organization declared criminal by the Judgment of the International Military Tribunal, namely the SS. The evidence shows that Fritz Fischer became a member of the SS in 1934 and remained in this organization until the end of the war. As a member of the SS he was criminally implicated in the commission

of War Crimes and Crimes against Humanity, as charged under Counts Two and Three of the Indictment.

CONCLUSION

Military Tribunal I finds and adjudges that the defendant Fritz Fischer is guilty under Counts Two, Three and four of the Indictment.

JUDGE KEALS: The Tribunal will now be in recess until ten o'clock tomorrow morning when the sentence will be imposed by the Tribunal upon the defendants who have been found guilty.

THE MARSHAL: The Tribunal will be in recess until ten o'clock tomorrow morning.

(The Tribunal adjourned until 20 August 1947 at 1000 hours.)

Official Transcript of the American Military
Tribunal in the matter of the United States of
America against Karl Brandt, et al, defendants,
sitting at Nuernberg, Germany, on 20 August 1947,
1900, Justice Beals presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.
The Honorable, the Judges of Military Tribunal I. Military Tribunal I
is now in session. God save the United States of America and this
Honorable Tribunal. There will be order in the court.

THE PRESIDENT: Military Tribunal I has convened this morning for
the purpose of imposing sentences upon the defendants who have been on
trial before this Tribunal and who have been, by the Tribunal, adjudged
guilty.

Officer of the Guard, will you bring before the Tribunal the
defendant Karl Brandt.

Karl Brandt, Military Tribunal I has found and adjudged you guilty
of War Crimes, Crimes against Humanity, and membership in an organization
declared criminal by the judgment of the International Military Tribunal,
as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted
Military Tribunal I sentences you, Karl Brandt, to death by hanging.

And may God have mercy on your soul.

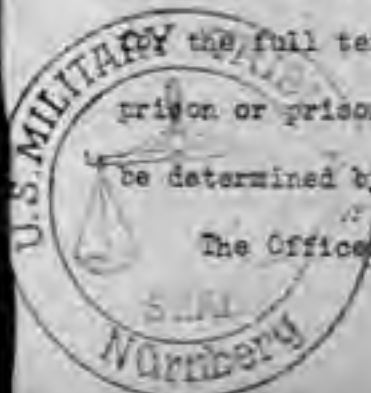
The Officer of the Guard will remove the defendant Brandt.

The Officer of the Guard will bring before the Tribunal the defen-
dant Siegfried Handloser.

Siegfried Handloser, Military Tribunal I has found and adjudged
you guilty of War Crimes and Crimes against Humanity, as charged under
the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted
Military Tribunal I sentences you, Siegfried Handloser, to imprisonment
for the full term and period of your natural life, to be served at such
prison or prisons, or other appropriate place of confinement, as shall
be determined by competent authority.

The Officer of the Guard will remove the defendant Handloser.



Officer of the Guard, you will bring the defendant Oskar Schroeder.
Oskar Schroeder, Military Tribunal I has found and adjudged you
guilty of War Crimes and Crimes against Humanity, as charged under the
indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted
Military Tribunal I sentences you, Oskar Schroeder, to imprisonment for
the full term and period of your natural life, to be served at such
prison or prisons, or other appropriate place of confinement, as shall
be determined by competent authority.

The Officer of the Guard will remove the defendant Schroeder.

Officer of the Guard, you will bring before the Tribunal the
defendant Karl Gensken.

Karl Gensken, Military Tribunal I has found and adjudged you guilty
of War Crimes, Crimes against Humanity, and membership in an organization
declared criminal by the judgment of the International Military Tribunal,
as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted
Military Tribunal I sentences you, Karl Gensken, to imprisonment for
the full term and period of your natural life, to be served at such
prison or prisons, or other appropriate place of confinement, as shall
be determined by competent authority.

The Officer of the Guard will remove the defendant Gensken.

Officer of the Guard, you will bring before the Tribunal the
defendant Karl Gebhardt.

Karl Gebhardt, Military Tribunal I has found and adjudged you
guilty of War Crimes, Crimes against Humanity, and membership in an
organization declared criminal by the judgment of the International
Military Tribunal, as charged under the indictment heretofore filed
against you.

For your said crimes on which you have been and now stand convicted
Military Tribunal I sentences you, Karl Gebhardt, to death by hanging.

And may God have mercy upon your soul.

The Officer of the Guard will remove the defendant Gebhardt.

The Officer of the Guard will bring before the Tribunal the defendant Rudolf Brandt.

Rudolf Brandt, Military Tribunal I has found and adjudged you guilty of War Crimes, Crimes against Humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Rudolf Brandt, to death by hanging.

And may God have mercy upon your soul.

The Officer of the Guard will remove the defendant Rudolf Brandt.

The Officer of the Guard will bring before the Tribunal the defendant Joachim Krugowsky.

Joachim Krugowsky, Military Tribunal I has found and adjudged you guilty of War Crimes, Crimes against Humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Joachim Krugowsky, to death by hanging.

And may God have mercy upon your soul.

The Officer of the Guard will remove the defendant Krugowsky.

The Officer of the Guard will bring before the Tribunal the defendant Helmut Poppendick.

Helmut Poppendick, Military Tribunal I has found and adjudged you guilty of membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you.

For your said crime on which you have been and now stand convicted Military Tribunal I sentences you, Helmut Poppendick, to imprisonment for a term of ten years, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent

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authority.

The Officer of the Guard will remove the defendant Poppendick.

The Officer of the Guard will bring before the Tribunal the defendant Wolfram Sievers.

Wolfram Sievers, Military Tribunal I has found and adjudged you guilty of War Crimes, Crimes against Humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Wolfram Sievers, to death by hanging.

And may God have mercy upon your soul.

The Officer of the Guard will remove the defendant Sievers.

The Officer of the Guard will bring before the Tribunal the defendant Gerhard Rose.

Gerhard Rose, Military Tribunal I has found and adjudged you guilty of War Crimes and Crimes against Humanity, as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Gerhard Rose, to imprisonment for the full term and period of your natural life, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

The Officer of the Guard will remove the defendant Rose.

The Officer of the Guard will bring before the Tribunal the defendant Viktor Brack.

Viktor Brack, Military Tribunal I has found and adjudged you guilty of War Crimes, Crimes against Humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Viktor Brack, to death by hanging.

And may God have mercy upon your soul.

The Officer of the Guard will remove the defendant Viktor Brack.

The Officer of the Guard will bring before the Tribunal the defendant Becker-Freyseng.

Hermann Becker-Freyseng, Military Tribunal I has found and adjudged you guilty of War Crimes and Crimes against Humanity, as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Hermann Becker-Freyseng, to imprisonment for a term of twenty years, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

The Officer of the Guard will remove the defendant Becker-Freyseng.

The Officer of the Guard will bring before the Tribunal the defendant Waldemar Hoven.

Waldemar Hoven, Military Tribunal I has found and adjudged you guilty of War Crimes, Crimes against Humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Waldemar Hoven, to death by hanging.

And may God have mercy upon your soul.

The Officer of the Guard will remove the defendant Hoven.

The Officer of the Guard will bring before the Tribunal the defendant Wilhelm Beiglbock.

Wilhelm Beiglbock, Military Tribunal I has found and adjudged you guilty of War Crimes and Crimes against Humanity, as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Wilhelm Beiglbock, to imprisonment for a term of fifteen years, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

The Officer of the Guard will remove the defendant Wilhelm Beiglbock.

The Officer of the Guard will bring before the Tribunal the defendant Herta Oberheuser.

Herta Oberheuser, Military Tribunal I has found and adjudged you guilty of War Crimes and Crimes against Humanity, as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Herta Oberheuser, to imprisonment for a term of twenty years, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

The Officer of the Guard will remove the defendant Herta Oberheuser.

The Officer of the Guard will bring before the Tribunal the defendant Fritz Fischer.

Fritz Fischer, Military Tribunal I has found and adjudged you guilty of War Crimes, Crimes against Humanity, and membership in an organization declared criminal by the judgment of the International Military Tribunal, as charged under the indictment heretofore filed against you.

For your said crimes on which you have been and now stand convicted Military Tribunal I sentences you, Fritz Fischer, to imprisonment for the full term and period of your natural life, to be served at such prison or prisons, or other appropriate place of confinement, as shall be determined by competent authority.

The Officer of the Guard will remove the defendant Fritz Fischer.

Military Tribunal I having now completed its duties in the trial, judgment, and sentence in Case No. 1, United States of America versus Karl Brandt and others, long pending before this Tribunal, it is now ordered that Military Tribunal I now adjourn without day.

Military Tribunal I stands adjourned.

(At 1030 hours, Military Tribunal I was adjourned.)

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